TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. 124.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, PRESIDENT OF SAID COURT, AND JOHN I. BENDER AND E. H. CUNNINGHAM, COMMISSIONERS OF SAID COURT, PLAINTIFFS IN ERROR,

vs.

THE STATE OF WEST VIRGINIA *EX REL.* C. W. DILLON, STATE TAX COMMISSIONER, AND AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, AND W. C. BAXTER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

FILED OCTOBER 5, 1906.

(20,402.)

(20,402.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 437.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, PRESIDENT OF SAID COURT, AND JOHN I. BENDER AND E. H. CUNNINGHAM, COMMISSIONERS OF SAID COURT, PLAINTIFFS IN ERROR,

vs.

THE STATE OF WEST VIRGINIA *EX REL.* C. W. DILLON, STATE TAX COMMISSIONER, AND AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, AND W. C. BAXTER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

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1 In the Supreme Court of Appeals of West Virginia.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner, *et al.*, Petitioners,

vs.

COUNTY COURT OF BRAXTON COUNTY ET ALS., Respondents.

In Mandamus.

Record and Taxation of Costs.

1906.

2 *Record.*

STATE OF WEST VIRGINIA:

Pleas before the Honorable Supreme Court of Appeals of the State of West Virginia on the 9th day of August, 1906.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner, *et al.*, Petitioners,

vs.

COUNTY COURT OF BRAXTON COUNTY ET ALS., Respondents.

In Mandamus.

Be it remembered that heretofore on the 9th day of August, 1906, at a special term of the Supreme Court of Appeals, continued and held in the city of Charleston, County of Kanawha, the following order was made and entered, to-wit:

Present: Hon. Henry C. McWhorter, President, Hon. Henry Brannon, Hon. George Poffenbarger, Hon. Frank Cox, and Hon. Joseph M. Sanders.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner, *et al.*, Petitioners,

vs.

COUNTY COURT OF BRAXTON COUNTY ET ALS., Respondents.

In Mandamus.

For reasons appearing to the Court, the judgment heretofore rendered in this case on this day is hereby set aside and annulled. And now this day came the petitioners, by Mollohan, McClintic & Mathews, E. G. Rider and C. W. Dillon, their attorneys, and the respondents, by Jake Fisher and Price, Smith, Spilman & Clay, their attorneys, and here the respondent, County Court of Braxton County, filed its return to the writ of alternative mandamus heretofore

awarded in this case, and respondents, Jacob Huffman and E. H. Cunningham, filed their joint return thereto, and said respondents also filed a certified copy of a financial statement of Braxton County to July 1, 1906; a certified statement showing the receipts
3 and expenditures of said County for the fiscal year ending July 1, 1906; an attested copy of the settlement of E. G. Rider, agent for said County Court, in the matter of refunding County bonds; attested copies of the record and opinion of this Court in the case of A. T. Taylor *et al. vs.* County Court of Braxton County *et al.;* the original contract for the erection of a county jail in Braxton County, with the contractors' bond annexed; certified copies of orders of said County Court, and the affidavit of Jacob Huffman, and to the competency and admissibility of such documents as evidence the petitioners excepted and objected. And to the said returns the petitioners filed a joint and separate exception, a demurrer and general and special replication. On the presentation of the petitioners' replications to *to* said returns the County Court asked time sufficient to take proof, which was by the Court denied. And all questions arising herein having been fully argued by counsel it is now here by the Court considered that the levy made by the County Court of Braxton County on the 18th day of July, 1906, for county purposes is contrary to law and utterly void; and it is further here now considered and ordered that a writ of peremptory mandamus be and is awarded to the County Court of Braxton County, Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, commanding them to convene as such County Court and lay a levy upon the taxable property of said County for County purposes, including district road tax, at so many cents on the one hundred dollars' valuation thereof, as will produce a sum that will not exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, for such purposes. Thereupon the
4 County Court of Braxton County moved the Court to suspend the execution of the judgment herein as prescribed by section 30, of chapter 135 of the Code of West Virginia to enable it to apply for a writ of error and supersedeas to the judgment aforesaid; but the Court refused to order such suspension. And thereupon the said County Court orally moved the Court to grant it a writ of error and supersedeas to the Supreme Court of the United States from the judgment aforesaid, but the Court refused to do so.

The petition aforesaid filed on behalf of the State of West Virginia, at the relation of C. W. Dillon, State Tax Commissioner, and others, is in words and figures as foll *ws*, to-wit:—

5 In the Supreme Court of Appeals of West Virginia.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner, and AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Taxpayers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY, and JACOB HUFFMAN, President of said Court; JOHN I. BENDER, and E. H. CUNNINGHAM, Commissioners of said Court.

In Mandamus.

To the Honorable the Judges of said Court:

Your petitioners would respectfully aver and show as follows:

1. That your petitioner, C. W. Dillon, is the State Tax Commissioner of the State of West Virginia, duly appointed and qualified, and has been performing the duties of such office since the 27th day of November, 1904, and that your petitioners Amos Bright, John M. Marple, Henry Bender and W. C. Baxter are each and all citizens, residents and tax papers of and in the County of Braxton and State of West Virginia.

2. That on Wednesday, July 18th, 1906, the defendants, the County Court of Braxton County, composed of the defendants Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, conducted and held a regular session of said Court at the Court House of Braxton County under and pursuant to section 29 of chapter 39 of the Code of West Virginia of 1906, and proceeded to make up an estimate of the amount necessary to be levied for the current fiscal year to cover county debts and liabilities payable during such year, including the probable expenditure for county purposes, the amount outstanding of unpaid orders on the county Treasurer, and a proper allowance for delinquent taxes, discount allowed on taxes paid on or before the

6 30th day of November, expenses of collections and contingencies, and for the purposes of laying a levy for county purposes to cover the estimated amount necessary to be raised for county purposes during the fiscal year.

3. Your petitioners further respectfully aver and show that in the year 1904 there was duly assessed and ascertained to be taxable property, real and personal, within the County of Braxton of the aggregate value of $2,799,604.00, and in the aforesaid year 1904, the said County Court at a regular session thereof, called and held for such purpose, made and fixed a levy upon such taxable property for all county purposes of every kind whatsoever, being in the aggregate of ninety-five cents on each one hundred dollars of the valuation of such property so taxable in said County for said year, to cover the estimated amount necessary to be raised for county purposes during such fiscal year, and that said levy at said rate so laid by said County Court raised and produced from such property in taxes the

sum of $26,596.23, subject only to such delinquencies and exonerations as may subsequently for said year have been returned or allowed.

4. Your petitioners further respectfully aver and show that for the year 1906 there has been assessed for the purposes of taxation in said County of Braxton real and personal property of the value of $10,195,301.00, and that such property has been duly assessed and ascertained to be subject to taxation in said County, and that said property being so subject to taxation it became and was the duty of said County Court to make up an estimate of the amount necessary to be levied for the current fiscal year for all county purposes and to make a levy thereupon on said property of so many cents on every hundred dollars of the valuation of the property taxable in said county according to said last assessment, as would cover the estimated amount necessary to be raised for county purposes during said fiscal year, and that under and pursuant to the statute law of this State said County Court became and was author-
7 ized to make such a levy upon said property at a rate or per cent. as would equal, but not exceed, the aggregate amount of taxes levied by it for said purposes in the year 1904, to-wit, $26,596.23, plus an additional amount of not to exceed seven per cent., or $1,861.73, making in the aggregate of the total taxes which said County Court could lawfully levy for the fiscal year 1906 the sum of $28,457.96. Petitioners aver and show that in order to raise the total sum from taxation in said County which said County Court was authorized and empowered to raise by levy, it was unnecessary to make and fix the rate of levy on said taxable property in said County at a higher rate than — cents on the one hundred dollars' valuation.

5. Your petitioners further aver and show that by an Act of the Legislature of West Virginia, being chapter 49 of the Acts of 1905, it was specifically enacted that no county court should in the year 1906 assess or levy taxes which should exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, and further provided in said Act that the word "taxes" as used therein should be construed to include district road taxes, as well as all other taxes for county purposes, and your petitioners are advised and charge that said statute in so restricting the powers of said county courts as to the amount which they were authorized to levy, was, and is, binding and mandatory, and renders any attempted levy made by any county court for the year 1906 over and above such seven per cent. increase of the amount levied for the year 1904 without any authority of law whatsoever and absolutely null and void. Petitioners further aver that said County Court of Braxton County in the year 1906 did not make up, as authorized and contemplated by said statute, an itemized estimate of the expenses to be provided for in such year, with the rate of levy in cents on each one
8 hundred dollars of valuation necessary to provide for the payment thereof and submit the question of an increased levy to the voters of the County, and no question of any increased levy

for such year has been in any way submitted to or voted upon by the voters of said Braxton County.

6. Your petitioners further respectfully show and aver that, not regarding the mandatory provisions of said statute in so restricting said county court to a levy for the year 1906 of an aggregate amount exceeding by not more than seven per cent. the levy made by it for the year 1904, the said County Court of Braxton County met on the 18th day of July, 1906, in regular session and by the vote of Jacob Huffman, the President of said Court, and E. H. Cunningham, one of the Commissioners of said Court, and over the protest and vote of John I. Bender, one of the Commissioners thereof, wrongfully and unlawfully proceeded to attempt to make a levy for county purposes for the year 1906 upon the taxable property in said county so assessed as aforesaid of sixty-five cents on every one hundred dollars' valuation thereof, and caused said pretended and attempted levy to be entered upon the order book of said Court as and for the levy for county purposes for the year 1906. Petitioners further show that said levy of sixty-five cents on each one hundred dollars' valuation of the property in said County as the same has been assessed for taxation for the year 1906 would raise in taxes the sum of $65,269.45. Petitioners further show that under and pursuant to the statute hereinbefore referred to said county court could not lawfully levy on said property at a rate which would raise to exceed the sum of $28,457.96. Petitioners therefore show that said attempted levy so wrongfully and unlawfully made and fixed by said County Court,

9 if the same should be carried out, would raise the sum of $36,811.49 in excess of the maximum amount which said County Court could lawfully raise by levy for said year. Petitioners are advised and aver and charge that said attempted levy for the year 1906 of sixty-five cents on each one hundred dollars' valuation was and is without authority of law and is null and void and constitutes no valid levy in law, such as it was, and is, the duty of said County Court to make.

7. Your petitioners would respectfully aver and show that your petitioner, C. W. Dillon, State Tax Commissioner, is under the statute law of this state charged with the duties of supervising and enforcing the laws thereof affecting taxation, and that it is his duty to see that such laws are properly regarded and enforced, and that the proper administration and enforcement of such laws is a matter largely affecting the State's wellfare and the regulation of her revenues; and would further aver and show that this petition is presented to the Supreme Court of Appeals because it is impracticable to present the same to the Circuit Court of Braxton County and to obtain a final hearing and decision thereon which would be binding upon the various county courts of this State at a sufficient early date to prevent confusion and complications throughout the State in similar cases; and further show that it is the duty of said County Court to make its levy in the month of July. Your other petitioners respectfully show and aver that they are large owners of real and personal property subject to taxation in the County of Braxton, and that as such they are personally and directly interested in the enforcement

of such void levy, as well as interested as citizens and taxpayers of said County, and they accordingly present this petition on their own behalf, as well as on the behalf of all other citizens and taxpapers of said county.

10 Your petitioners therefore pray that an alternative writ of mandamus may be awarded to them, directed to the County Court of Braxton County, a corporation, and to Jacob Huffman, President of said County Court, and John I. Bender and E. H. Cunningham, Commissioners thereof, returnable to this Honorable Court in the City of Charleston, Kanawha County, West Virginia, on a day and time therein to be named, commanding them, the said County Court of Braxton County and said President and Commissioners thereof, to meet and levy a proper and sufficient tax upon the taxable property within said County of Braxton as shown by the official assessment thereof made for the year 1906, and officially certified to said Court by the proper authorities, as will cover the estimated amount necessary to be raised for county purposes during said fiscal year, not to exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, or show cause, if any it, the said County Court of Braxton County, or they, the said Jacob Huffma-, President thereof, and John I. Bender and E. H. Cunningham, Commissioners thereof, have or can show, why they should not do.

C. W. DILLON,
State Tax Commissioner of West Virginia.
AMOS BRIGHT,
JOHN M. MARPLE,
HENRY BENDER,
W. C. BAXTER,
By Counsel.

C. W. DILLON AND MOLLOHAN,
McCLINTIC & MATTHEWS,
Attorneys.

STATE OF WEST VIRGINIA, *County of Kanawha, To-wit:*

11 C. W. Dillon, State Tax Commissioner of West Virginia, one of the petitioners named in the foregoing petition, being duly sworn, on his oath says that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information, and that so for as they are therein stated to be upon information, he believes them to be true.

C. W. DILLON.

Taken, sworn to and subscribed before me this 25th day of July, 1906.

W. GORDON MATHEWS,
Notary Public.

(Endorsement.)

"STATE OF WEST VIRGINIA *ex Relatione* C. W. DILLON, State Tax Commissioner, *et als.*

v.

COUNTY COURT OF BRAXTON COUNTY ET ALS.

Petition for Mandamus.

The alternative writ prayed for is awarded returnable at Charleston August 8th, 1906, at 10 o'clock, A. M.

H. C. McWHORTER.
JOSEPH M. SANDERS."

Pursuant to the foregoing order in vacation, an alternative writ of mandamus was issued in the words and figures following, to-wit:

STATE OF WEST VIRGINIA:

In the Supreme Court of Appeals.

CHARLESTON, *July* 25, 1906.

To the County Court of Braxton County and Jacob Huffman, President of said Court, John I. Bender and E. H. Cunningham, Commissioners of said Court, Greeting:

12 Whereas, it has this day been represented to the Judges of our Supreme Court of Appeals on behalf of the State of West Virginia, at the relation of C. W. Dillon, State Tax Commissioner, and Amos Bright, John M. Marple, Henry Bender and W. C. Baxter, citizens, residents and tax-payers of Braxton County, by their petition filed in this Court, that they are entitled to the relief prayed for in said petition, which petition is in words and figures as follows:

In the Supreme Court of Appeals of West Virginia.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner, and AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Tax-payers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY and JACOB HUFFMAN, President of said Court; JOHN I. BENDER and E. H. CUNNINGHAM, Commissioners of said Court.

In Mandamus.

To the Honorable the Judges of sais Court:

Your petitioners would respectfully aver and show as follows:

1. That your petitioner, C. W. Dillon, is the State Tax Commis-

sioner of the State of West Virginia, duly appointed and qualified, and has been performing the duties of such office since the 27th day of November, 1904, and that your petitioners Amos Bright, *H*ohn M. Marple, Henry Bender and W. C. Baxter are each and all citizens, residents and tax-payers of and in the County of Braxton and State of West Virginia.

2. That on Wednesday, July 18th, 1906, the defendant, the County Court of Braxton County, composed of the defendants Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, conducted and held a regular session of said Court at the Court House of Braxton County under and pursuant to section 29 of chapter 39 of the Code of West Virginia of 1906, and proceeded to make up an estimate of the amount necessary to be levied for the current fiscal year to cover county debts and liabilities payable during such year, including the probable expenditure for county purposes, the amount outstanding of unpaid orders on the county Treasurer, and a proper allowance for delinquent taxes, discount allowed on taxes paid on or before the 30th day of November, expenses of collections and contingencies, and for the purpose of laying a levy for county purposes to cover the estimated amount necessary to be raised for county purposes during the fiscal year.

13 3. Your petitioners further respectfully aver and show that in the year 1904 there was duly assessed and ascertained to be taxable property, real and personal, within the County of Braxton of the aggregate value of $2,799,604.00, and in the aforesaid year 1904, the said County Court at a regular session thereof, called and held for such purpose, made and fixed a levy upon such taxable property for all county purposes of every kind whatsoever, being in the aggregate ninety-five cents on each one hundred dollars of the valuation of such property so taxable in said County for said year, to cover the estimated amount necessary to be raised for county purposes during such fiscal year, and that said levy at said rate so laid by said County Court raised and produced from such property in taxes the sum of $26,596.23, subject only to such delinquencies and exonerations as may subsequently for said year have been returned or allowed.

4. Your petitioners further respectfully aver and show that for the year 1906 there has been assessed for the purposes of taxation in said County of Braxton real and personal property of the value of $10,195,301.00, and that such property has been duly assessed and ascertained to be subject to taxation in said County, and that said property being so subject to taxation it became and was the duty of said County Court to make up an estimate of the amount necessary to be levied for the current fiscal year for all county purposes and to make a levy thereupon on said property of so many cents on every hundred dollars of the valuation of the property taxable in said county according to said last assessment, as would cover the estimated amount necessary to be raised for county purposes during said fiscal year, and that under and pursuant to the statute law of this State, said County Court became

and was authorized to make such a levy upon said property at a rate or per cent as would equal, but not exceed, the aggregate amount of taxes levied by it for said purposes in the year 1904, to-wit, $26,596.23, plus an additional amount of not to exceed seven per cent., or $1,861.73, making in the aggregate of the total taxes which said County Court could lawfully levy for the fiscal year 1906 the sum of $28,457.96. Petitioners aver and show that in order to raise the total sum from taxation in said County which said County Court was authorized and empowered to raise by levy, it was unnecessary to make and fix the rate of levy on said taxable property in said County at a higher rate than — cents on the one hundred dollars' valuation.

5. Your petitioners further aver and show that by an Act of the Legislature of West Virginia, being chapter 49 of the Acts of 1905, it was specifically enacted that no county court should in the year 1906 assess or levy taxes which should exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, and further provided in said Act that the word "taxes" as used therein should be construed to include district road taxes, as well as all other taxes for county purposes, and your petitioners are advised and charge that said statute in so restricting the powers of said county courts as to the amount which they were authorized to levy was, and is, binding and mandatory, and renders and attempted levy made by any county court for the year 1906 over and above such seven per cent. increase of the amount levied for the year 1904 without any authority of law whatsoever and absolutely null and void. Petitioners further aver that said County Court of Braxton County in the year 1906 did not make up, as authorized and contemplated by said statute, an itemized estimate of the expenses to be provided for in such year, with the rate of levy in cents on each one hundred dollars of valuation necessary to provide for the payment thereof and submit the question of an increased levy to the voters of the County, and
14 no question of any increased levy for such year has been in any way submitted to or voted upon by the voters of said Braxton County.

6. Your petitioners further respectfully show and aver that, not regarding the mandatory provisions of said statute in so restricting said county court to a levy for the year 1906 of an aggregate amount exceeding by not more than seven per cent. the levy made by it for the year 1904, the said County Court of Braxton County met on the 18th day of July, 1906, in regular session and by the vote of Jacob Huffman, the President of said Court, and E. H. Cunningham, one of the Commissioners of said Court, and over the protest and vote of John I. Bender, one of the Commissioners thereof, wrongfully and unlawfully proceeded to attempt to make a levy for county purposes for the year 1906 upon the taxable property in said county so assessed as aforesaid of sixty-five cents on every one hundred dollars' valuation thereof, and caused said pretended and attempted levy to be entered upon the order book of said Court as and for the levy for county purposes for the year 1906. Petitioners fur-

ther show that said levy of sixty-five cents on each one hundred dollars' valuation of the property in said County as the same has been assessed for taxation for the year 1906 would raise in taxes the sum of $65,269.45. Petitioners further show that under and pursuant to the statute hereinbefore referred to said county court could not lawfully levy on said property at a rate which would raise to exceed the sum of $28,457.96. Petitioners therefore show that said attempted levy so wrongfully and unlawfully made and fixed by said County Court, if the same should be carried out, would raise the sum of $36,811.49 in excess of the maximum amount which said County Court could lawfully raise by levy for said year. Petitioners are advised and aver and charge that said attempted levy for the year 1906 of sixty-five cents on each one hundred dollars' valuation was and is without authority of law and is null and void and constitutes no valid levy in law, such as it was, and is, the duty of said County Court to make.

7. Your petitioners would respectfully aver and show that your petitioner, C. W. Dillon, State Tax Commissioner, is under the statute law of this state charged with the duties of supervising and enforcing the laws thereof affecting taxation, and that it is his duty to see that such laws are properly regarded and enforced, and that the proper administration and enforcement of such laws is a matter largely affecting the State's wellfare and the regulation of her revenues; and would further aver and show that this petition is presented to the Supreme Court of Appeals because it is impracticable to present the same to the Circuit Court of Braxton County and to obtain a final hearing and decision thereon which would be binding upon the various county courts of this State at a sufficient- early date to prevent confusion and complications throughout the State in similar cases; and further show that it is the duty of said County Court to make its levy in the month of July. Your other petitioners respectfully show and aver that they are large owners of real and personal property subject to taxation in the County of Braxton, and that as such they are personally and directly interested in the enforcement of such void levy, as well as interested as citizens and tax-payers of said County, and they accordingly present this petition on their own behalf, as well as on the behalf of all other citizens and tax-payers of said County.

Your petitioners therefore pray that an alternative writ of mandamus may be awarded them, directed to the County Court of Braxton County, a corporation, and to Jacob Huffman, President
15 of said County Court, and John I. Bender and E. H. Cunningham, Commissioners thereof, returnable to this Honorable Court in the City of Charleston, Kanawha County, West Virginia, on a day and time therein to be named, commanding them, the said County Court of Braxton County and said President and Commissioners thereof, to meet and levy a proper and sufficient tax upon the taxable property within said County of Braxton as shown by the official assessment thereof made for the year 1906, and officially certified to said Court by the proper authorities, as will cover the estimated amount necessary to be raised for county purposes during said

fiscal year, not to exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, or show cause, if any it, the said County Court of Braxton County, or they, the said Jacob Huffman, President thereof, and John I. Bender and E. H. Cunningham, Commissioners thereof, have or can show, why they should not do so.

C. W. DILLON,
State Tax Commissioner of West Virginia.
AMOS BRIGHT,
JOHN M. MARPLE,
HENRY BENDER,
W. C. BAXTER,
By Counsel.

C. W. DILLON AND
MOLLOHAN, McCLINTIC & MATHEWS, *Attorneys.*

STATE OF WEST VIRGINIA, *County of Kanawha, To wit:*

C. W. Dillon, State Tax Commissioner of West Virginia, one of the petitioners named in the foregoing petition, being duly sworn, on his oath says that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information, and that so far as they are therein stated to be upon information, he believes them to be true.

C. W. DILLON.

Taken, sworn to and subscribed before me this 25th day of July, 1906.

W. GORDON MATHEWS,
Notary Public.

Now, therefore, we being willing that justice be done in the premises, do command, in the name of the State of West Virginia, you, the County Court of Braxton County, and Jacob Huffman,
16 President of said court, and John I. Bender, and E. H. Cunningham, Commissioners of said Court, and each of you, to meet and levy a proper and sufficient tax upon the taxable property within said County of Braxton, as shown by the official assessment thereof made for the year 1906, and officially certified to said Court by the proper authorities, as will cover the amount necessary to be raised for county purposes during said fiscal year, not to exceed by more than seven per cent. the actual amount of taxes levied by it in the year 1904; or that you appear before the Judges of our Supreme Court of Appeals at their court room in the City of Charleston, Kanawha County, West Virginia, on Wednesday, the 8th day of August, 1906, at ten o'clock A. M., and show cause, if any it, the said County Court of Braxton County, or they, the said Jacob Huffman, President thereof, and John I. Bender and E. H. Cunningham, Commissioners thereof, have or can show why they should not do so.

Witness, Wm. B. Mathews, Clerk of the Supreme Court of Ap-

peals of West Virginia, this 25th day of July, 1906, and in the 44th year of the State.

WM. B. MATHEWS, *Clerk.*

Attest:

—— ——, *Clerk.*

STATE OF WEST VIRGINIA:

To the Sheriff of Braxton County, Greeting:

You are hereby commanded in the name of the State of West Virginia to make service of this writ upon the said The County Court of Braxton County and Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, and that you make your return hereof to this office on or before the 8th day of August, 1906, at ten o'clock, A. M. of said day.

17 Witness, Wm. B. Mathews, Clerk of our said Supreme Court of Appeals, this 25th day of July, 1906, and in the 44th year of the State.

WM. B. MATHEWS, *Clerk.*

Attest:

—— ——, *Clerk.*

(Endorsement.)

Executed on the within named Jacob Huffman and E. H. Cunningham July the 27th, 1906 by delivering to each of them in person a true copy hereof.

F. M. GIBSON, *Dept.*,
For JOHN ADAMS, *S. B. C.*

Executed on E. W. Hefner clerk of Braxton county court July 27th, 1906 and on John I. Bender Aug. 1*ist*. 1906 by delivering to each of them in person a true office copy hereof.

JOHN ADAMS, *S. B. C.*

Executed on Braxton county court, a corporation July 27th. 1906 by delivering to Jacob Huffman President of said court a true office copy hereof in Braxton county West Virginia he the said Jacob Huffman being President of said county court and residing in said county and state.

F. M. GIBSON, *Deputy*,
For JOHN ADAMS, *S. B. C.*

The answer and return of the County Court of Braxton County and the joint and several answer and return of Jacob Huffman, President of the County Court of Braxton County, and E. H. Cunningham, one of the Commissioners of said Court, to the said writ of alternative mandamus, is in words and figures as follows, to wit:

18 In the Supreme Court of Appeals of West Virginia.

THE STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Tax-payers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, Presi- of said Court; JOHN I. BENDER and E. H. CUNNINGHAM, Commissioners of said Court.

The County Court of Braxton County, by way of answer and return to the alternative writ of mandamus in this cause, says that a peremptory writ of mandamus ought not to issue against it herein, for the following reasons,

First. It is true as stated in said alternative writ that on Wednesday, July 18, 1906, this defendant proceeded to make up an estimate of the amount of taxes necessary to be levied for the current fiscal year to cover the county debts and liabilities, payable during said year, including the probable expenditure for county purposes, the amount outstanding of unpaid orders on the County Treasury and the proper allowance for delinquent taxes, discount allowed on taxes paid on or before the 30th day of November, expense of collection and contingencies. It was found by making a conservative estimate as aforesaid, that it would require at the least the sum of $57146.00 for the purpose aforesaid, as will appear from a statement of said estimate which was entered by the Clerk of this defendant on the proper record book, a copy of which is filed herewith as part of this answer marked Exhibit "A." This estimate does not include as it should have done any amount for the sinking fund for the railroad bonds hereinafter mentioned, nor for paying any part of the principal of said bonds,

19 a large amount to-wit of $10000.00 of which is now due and payable.

Second. It was found as stated in said alternative writ that the aggregate amount of taxes levied by this defendant for the year 1904, was only $26596.23 and that an additional seven per cent. upon said amount would be only $1861.73, and that if this defendant was restricted to such a levy as would produce taxes equal to the said amount of $26596.23, which was raised in 1904, plus the said sum of $1861.73, it could only levy such an amount as would produce $28,457.96, and that this would fall short of the amount necessary to meet the current expenses of the county and such of its debts and obligations as it was obliged to pay during the year, by $28688.04. Said levy of 1904 was made up as follows: 80 cents on the one hundred dollars for general county purposes; 10 cents for interest on the railroad bonds and 5 cents for the sinking fund for said bonds.

Third. This defendant says that it was therefore advised that it was its duty to assess such a rate of taxes as would produce suffi-

cient funds to pay the estimated amount of its current expenses and debts and liabilities aforesaid, and that the provisions of Chapter 48 of the Acts of 1905, which prohibit the County Court from assessing or levying, in the year 1906, taxes which shall exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year 1904, are as applied to the County of Braxton, unconstitutional and void and not binding upon this defendant.

Fourth. Therefore, this defendant did, as alleged in said alternative writ, disregard the said provisions of said statute, and levied for county purposes, fifty cents on the hundred dollars, valuation of real and personal property; for the sinking fund to pay the bonded indebtedness of the county, five cents on the hundred dollars; for interest on the bonded debt, five cents on the hun-
20 dred dollars, and for keeping the roads in each *majesterial* district, five cents on the hundred dollars, making a total of sixty-five cents as alleged in said alternative writ. A duly certified copy of the order making said levy is filed herewith as part of this answer, marked Exhibit "B."

Fifth. Now this respondent says that the said proviso contained in Section 29 of Chapter 39 of the Code of West Virginia, as amended by Chapter 48 of the Acts of 1905 prohibiting the County Court from levying, in the year 1906, taxes which shall exceed by more than seven per cent. the aggregate amount of the taxes levied by it in the year 1904, is so far as it applies to this defendant, unconstitutional, null and void and of no binding effect for the following reasons:

1. The Legislature of the State of West Virginia has no power under the Constitution to place any restriction upon the power of the County Courts to levy taxes for county purposes beyond the restriction contained in the Constitution, itself. By Section 24 of Article 8 of the Constitution of West Virginia, the County Courts are given "authority to lay and disburse the county levies" under such regulations as may be prescribed by law. The only restriction upon this power is that contained in Section 7, Article 10 of the Constitution, which is as follows:

"County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars' valuation, except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions incolcing the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it."

21 The defendant is advised that it was intended by these provisions of the Constitution to vest in the County Courts exclusive power to lay and disburse the county levies subject only to the restriction aforesaid.

2. This act contains a provision that the proviso above mentioned restricting the power of the County Court, shall not extend to the

Counties of McDowell and Gilmer, but that in such counties, the County Court may levy taxes under the limitation contained in Section 7 of Article 10 of this State, the effect of which is to allow the County Courts of McDowell and Gilmer Counties to levy taxes in the aggregate, as high as ninety-five cents on the hundred dollars. This is special legislation upon its face. It is the same thing as if a special act were passed, applicable to McDowell and Gilmer Counties, and is therefore contrary to the provisions of Section 39, Article 6 of the Constitution of West Virginia. There is nothing in the situation or condition of the Counties of McDowell and Gilmer to justify the Legislature in classifying these Counties by themselves.

3. This is special legislation for the reason that it has the same effect as if the Legislature had passed fifty-five different acts, each applying to a different county of the State, giving the exact amount of money that can be raised by taxes in each of those counties for the years of 1905, 1906 and 1907. The aggregate amount of taxes raised in each county for 1904, is easily ascertainable. The Act then simply allows five per cent. or seven per cent. or nine per cent. to be added to that aggregate. It thereby fixes a definité amount in each county, and this amount probably bears no relation to the taxable values of the county or the necessities of the county as they may arise during the years mentioned in this proviso.

4. This proviso violates Section 10 of Article 1 of the Constitution of the United States, which provides that no state shall
22 pass any law impairing the obligation of contracts. The effect of this law, as applied to Braxton County, is to impair the obligation of her contracts, as will appear from the following statement. In the year 1889, the County Court of Braxton County subscribed $60000.00 to the capital stock of the Western and Elk River Railroad Company and paid said subscription by issuing its six per cent. bonds of the aggregate amount of $60000.00, redeemable in thirty years or at the pleasure of the County after ten years; the interest to be paid annually at the National Exchange Bank at Weston, all of which will appear from certified copies of the proceedings of said Court relating to said matter which are filed herewith as part of this return, marked Exhibit "C." Subsequently in 1901, 40000 of said bonds were refunded into new bonds under authority of an act of the Legislature, bearing 4 per cent. interest payable semi-annually, as will appear by certified copies of the orders of said Court which are filed herewith as part of this answer, marked Exhibit "B."

Respondent avers that there are still outstanding and unpaid of said six per cent. bonds, ten thousand dollars, as well as the whole of said four per cent. bonds, amounting to $40000.00; that at the time said bonds were issued there was no restriction upon the power of the County Court to levy taxes for the payment of the principal and interest of said bonds. And by Section 59 of Chapter 54 of the Code, which was then in force, it was provided as follows:

"At the time *of* the annual levy of any such county, city, town or village is laid, there shall be a tax levied on all the property subject to taxation therein, sufficient to pay the amount of such subscrip-

tion, if payable in cash, or to pay the annual interest on the bonds of the county, city, town or village, if bonds be issued and to create a sinking fund to pay the principal when it shall become due; and in the case of such subscription being made by a district of
23 any county, the county court of such county shall levy such tax on the property subject to taxation in such district. Such taxes shall be collected and accounted for in the same manner as other taxes and levies." (Acts 1881, ch. 17. Supervisors of Cumberland Co., 89 Va. 614.)

These Constitutional provisions and this statute constitute the obligation of the County of Braxton to the holders of said bonds. The effect of the proviso contained in said Chapter 48 of the Acts of 1905 is that the amount of money which can be raised thereunder namely, $28457.96, is not sufficient to pay the current expenses and obligations of the County of Braxton, and pay the interest and provide for the sinking fund to pay off said railroad bonds, as appears from the statement heretofore filed with this answer, marked Exhibit "A." The said railroad bonds were issued under authority of the vote of the people of the County as set forth in the copies of the orders heretofore filed, and are therefore legal and binding obligations of the County, and if the proviso contained in Chapter 48 of the Acts of 1905 is enforced, the County of Braxton cannot carry out and keep its contracts with said bond-holders, which it could do but for the restrictions contained in said Act of 1905. Therefore defendant says that said Act is unconstitutional and void as being contrary to said provisions of the Constitution of the United States.

5. In addition to the said railroad bonds there were outstanding County orders upon the County Treasury amounting to $9421.00 on the County fund and $7770.00 on what is known as the bridge fund of said County, and there was legal indebtedness due, amounting to $15000.00 on account of the building of a jail, which this defendant had been compelled by mandamus of the Circuit Court of Braxton County to build, a duly certified copy of the writ of mandamus in this case is filed herewith, marked Exhibit "E." The contract for building said jail, made in pursuance of said
24 writ of mandamus, was entered into on the 21st day of September, 1904, prior to the passing of the said Act of 1905. At the time said contract was made there was no restriction upon the power of this defendant to levy taxes to pay for the building of said jail, except that contained in said Section 7, Article 10 of the Constitution. And in as much as the said Act of 1905 attempts to take away the power of this defendant to levy sufficient taxes to pay said obligations, it is contrary to the Constitution of the United States, as it has the effect to impair the obligation of said contract.

The item of indebtedness mentioned in said estimate as $7770.00, on account of bridge fund, is merely the principal of said indebtedness and when the interest now due upon said indebtedness is added it will amount to about $10460.00; said indebtedness arose out of a contract made between J. V. Tully and this defendant, the County Court of Braxton County, on the 5th day of October, 1899, by which

the said J. V. Tully contracted to build abutments for four bridges, which this defendant had undertaken to construct in said County. The said Tully having completed his work in the construction of said abutments, certain County orders were issued to him by this defendant upon the Sheriff of Braxton County, to pay for said work. These orders were issued in the years of 1899 and 1900. A considerable amount was paid upon these orders, leaving however, the balance of $7770.00 still due thereon, as stated in said estimate, exclusive of interest as aforesaid. Whilst the balance of these orders were outstanding, as aforesaid, one A. L. Taylor and other taxpayers of Braxton County brought suit against this defendant to enjoin it from paying said orders, alleging that they were illegal and not binding obligations of the County. From a decree of the Circuit Court of Braxton County perpetuating such injunc-
25 tion, an appeal was taken by this defendant, to the Supreme Court of Appeals of West Virginia, which upon full hearing reversed said decree, so far as it in any way relates to or impairs the validity of or affects any of the County orders issued to James V. Tully or his assignees or of the levy for bridge purposes, holding said orders to be valid and binding upon the County, as will fully appear from the certified copy of the mandate issued by this Court in said cause, which is filed herewith as part of this answer, marked Exhibit "C." Defendant here refers the Court to the record of said cause still remaining in this Court, together with the opinion delivered by Honorable George Poffenbarger, therein, as more fully containing the facts and decision of this Court in said cause.

Defendant further says that at the time said contract was made between it and the said J. V. Tully, there was no restriction upon its power to levy taxes for the payment of the said orders issued under said contract, to the said Tully, except that contained in Section 7 of Article 10 of the Constitution of West Virginia. And in as much as the said Act of 1905 limits and restricts the power of this Court to such an extent as to disable it from levying sufficient taxes to pay its current expenses and the said balance due upon the orders issued to said Tully, as aforesaid, said Act is contrary to the provisions of the Constitution of the United States which prohibits the State from passing any law impairing the obligations of contracts; it is therefore void.

The defendant further says that it is advised that in as much as the rights of the holders of the said County orders, assignees of the said Tully, will be affected by the judgment of the Court in this case, they are necessary parties thereto and should be summoned and allowed to defend their rights herein, before final judgment is entered.

Wherefore, defendant now says that it is advised that it was its duty to levy such an amount of taxes for the year of 1906
26 as would pay the current expenses and obligations of the County, provide for the interest and sinking fund on said railroad bonds, and pay off the $10000.00 of said six per cent. bonds which are now due and payable, and pay the said balance of $7770.00 with the interest thereon due upon the said Tully orders,

and to pay the balance of $15000.00 still due on account of the erection of said jail, as well as to pay the then outstanding orders amounting to $9421.00; that the laws which were in force at the time the said railroad bonds and the said Tully orders and the said jail contract were made, continue in force for the payment of said obligations, and that the said Act of 1905 can have no application to said obligations which were incurred prior to its passage.

All of these obligations are binding upon the County and it was necessary for the County Court to make provisions for their payment out of the levy of 1906. But if this Act under consideration is enforced, there will not be funds enough to pay these claims and obligations against the County in addition to its current expenses, and so defendant says that said act impairs the obligations of the contracts of the County of Braxton with the various holders of its outstanding orders and other obligations. It is therefore void.

Defendant further says that the estimate upon which said levy of 1906 was based was not very carefully made, and defendant did not, at the time, understand that it need be accurate, and in point of fact, defendant says that said estimate is, as he verily believes, very much below the amount of money that will be needed for county purposes for the current year. The actual expenditures during the year 1905, for the current county expenses, exclusive of any payment on bridges or jail, amounted to $15,054.17. And the expenditures in the several districts for keeping up the roads amounted to $7,719.00, and the defendant has now made a corrected estimate of the amount*ed* that it is convinced that will be actually
27 needed to pay the current expenses of the county and meet the obligations which it is required to pay during the fiscal year of 1906. And it files said statement *herwith* as part of this answer, marked Exhibit "D." From this corrected estimate it will require $26073.17 to pay the current expenses of the county and keeping up the roads, allowing for commissions, delinquent lists and exonerations a reasonable sum. This statement is based upon the actual experience during last year. This will leave only $2384.79 to be applied to meet the other obligations of the county and will be insufficient to pay even the overdue and accruing interest on the railroad bonds, leaving nothing for the sinking fund or for the overdue bonds or for the Tully orders or for the balance due on the jail contract or for the other outstanding county orders as set forth in said statement. And so defendant says that said act of 1905 clearly and plainly violates the obligations of the contracts of this defendant and it is therefore void.

Wherefore for the reasons aforesaid, this defendant says that the peremptory writ of mandamus ought not to be issued against it as prayed for.

COUNTY COURT OF BRAXTON COUNTY,
By JAKE FISHER,
GEO. E. PRICE, *Attorneys.*

STATE OF WEST VIRGINIA, *Kanawha County, To wit:*

Jacob Huffman, being sworn, says that he is the President of the County Court of Braxton County; that he has read the foregoing return and answer and knows the contents thereof; that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information; that so far as they are therein stated to be upon information, he believes them to be true.

JACOB HUFFMAN.

28 Subscribed and sworn to before me, a Notary Public of Kanawha County, West Virginia, this 9th day of August, 1906.

C. G. DAVIS,
Notary Public.

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

In the Supreme Court of Appeals of West Virginia.

THE STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Tax-payers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of said Court; JOHN I. BENDER, and E. H. CUNNINGHAM, Commissioners of said Court.

The joint and several answer and return of Jacob Huffman, President of the County Court of Braxton County, and E. H. Cunningham, one of the Commissioners of said Court, to alternative writ of mandamus heretofore issued in this cause.

These defendants say that they have read the answer and return of the County Court of Braxton County, filed in this cause; that said return was prepared and made with their approval, and they adopt the said answer and return as setting forth their defense to the said writ of mandamus, and as showing sufficient cause why a peremptory writ of mandamus should not be issued in this cause. And they ask that they may be given the benefit of the said facts and allegations contained in said return. Wherefore, they
29 say that the said peremptory writ of mandamus ought not to issue against them in this cause as prayed for.

JACOB HUFFMAN,
E. H. CUNNINGHAM,
By Counsel.

JAKE FISHER,
GEO. E. PRICE,
Counsel.

STATE OF WEST VIRGINIA, *Kanawha County, To wit:*

Jacob Huffman and E. H. Cunningham, the defendants named in the foregoing answer and return, being duly sworn, say that the facts and allegations contained in said answer are true, except so far as they are therein stated to be upon information, and that so far as they are therein stated to be upon information, they believe them to be true.

JACOB HUFFMAN.
E. H. CUNNINGHAM.

Subscribed and sworn to before me, a Notary Public of Kanawha County, West Virginia, in my said County, this 9th day of August, 1906.

C. G. DAVIS,
Notary Public.

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

EXHIBIT "A."

At a County Court held for the County of Braxton *County* at the Court house thereof on Saturday, July, 14th, 1906. Present Jacob Huffman, President and John I. Bender and E. H. Cunningham, Commissioners.

30 The following orders were entered:

Estimated amounts necessary to be levied for the current fiscal year, 1906, of all County debts, *includeing* the probable expenditures for County purposes, the amount of outstanding unpaid orders on the County Treasurer, *allowences* for delinquent taxes, discount and expense of Collecting & etc. namely:

Present indebti-ness on County fund, outstanding drafts	$9,421.00
Present indebti-ness on bridge fund outstanding drafts	7,770.00
Necessary to be paid during the year on Jail contract..	15,000.00
Necessary to be paid during year on Frametown Bridge.	6,000.00
Salaries of Officers, Witnesses, *Jurrors,* Allowances for the poor & other expenses	12,600.00
Present *indebtiness* of Interest on R. R. bonds	825.00
Necessary to be paid during the year on account of interest on R. R. bonds	2,300.00
Commission, Delinquent List & Exonerations	3,300.00
	$57,146.00

It appearing to the Court, that the foregoing statement is a conservative estimate of the *indebtiness* of said County, together with the probable expenditures for the coming year, the Court doth

therefore lay the following Levies for said purposes aforesaid, and, also for Sinking fund, and Road fund for the various Districts.

The Court doth lay a levy of Fifty Cents, for County purposes, on each One Hundred dollars' valuation of Real and Personal property as assessed in the County of Braxton for the *ensueing* year.

The Court doth lay a levy of Five Cents on each one hundred dollars' valuation of Real and Personal Property as assessed in the County, for the *ensueing* year, for purpose of creating a
31 sinking fund to pay the bonded *indebtiness* of the County.

The Court doth lay a levy of Five Cents on each One hundred dollars' valuation of Real Estate and Personal Property, as assessed in the County for the *ensueing* year for the purpose of creating a fund to pay the interest on the bonded debt of the County.

The Court doth lay a levy of Five Cents on each One hundred dollars' valuation of real estate and personal property as assessed in the County of B axton in each of the Magisterial Districts for the *ensueing* year, for the purpose of keeping up roads in said Districts.

STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

I, E. W. Hefner, Clerk of the County Court of the County and State aforesaid, do hereby certify, that the foregoing is a true copy from the records in my Office.

Given under my hand, this the 2nd day of August, 1906.

E. W. HEFNER, *Clerk.*

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

EXHIBIT "B."

STATE OF WEST VIRGINIA:

At a county court held for the County of Braxton, at the court house thereof, on the 5th day of March, 1889.

Present: Samuel Fox, President, and T. S. Colter and J. B. Norman, commissioners.

32 "The following order was entered."

"The county court of said county deeming it desirable for the said county to appropriate money by subscription to the capital stock of the Weston and Elk River Railroad Company, a corporation existing under the laws of the State of West Virginia, to aid in the construction of a railroad to commence at or near the town of Weston in the County of Lewis, and State of West Virginia, and to run thence by the most practicable route to some point at or near the town of Sutton, in the County of Braxton and State aforesaid, to the extent of the sum of Sixty Thousand Dollars. And for the purpose of legalizing such appropriation and subscription, the court doth now direct and order that a vote be taken of the legal voters of said County, upon the question of such subscription by said county of Braxton to the capital stock of the Weston and Elk River Railroad Company, of the said sum of sixty thousand dollars, at a special elec-

tion now ordered to be held for that purpose in said County of Braxton, on the 8th day of April, 1889. And the court doth appoint the following named commissioners of said election, to hold, conduct, ascertain and certify according to law the result of said election, for the following places of voting in said County of Braxton, on said 8th day of April, 1889:

Leatherwood Precinct, Birch District:—A. J. Young, Luthur Mollohan and W. C. McMorrow.

Frametown Precinct, Birch District:—Samuel James, William H. Mollohan and William N. Boggs.

Mouth of Birch Precinct, Birch District:—Camden Fox, Cortez Mollohan and Granville McMorrow.

Sleith's Fork Precinct, Birch District:—C. M. Mollohan, Jahue Stalnaker and William M. Rollyson.

Little Birch Precinct, Holly District:—A. N. Ellison, John D. Strange and M. J. Halstead.

Braxton Court House Precinct, Holly District:—Peter L. Curry, J. T. Frame and P. B. Perry.

33 Baker's Run Precinct, Holly District:—Thomas Skidmore, C. J. Hosey and N. W. Wells.

Newville Precinct, Holly District:—John J. Skidmore, W. D. Forinash and Jacob Harper.

Shaversville Precinct, Holly District:—A. C. Dyer, A. Golden and T. C. Meadows.

Long Run Precinct, Otter District:—Asa Long, B. T. Canfield and Willis Frame.

Cedar Creek Precinct, Otter District:—Jacob Hefner, Peter L. Bosley and N. W. Loyd.

Little Otter Salt Works Precinct, Otter District:—T. E. Friend, H. F. Smith and J. Newt Rusmisel.

Rider School House Precinct, Otter District:—B. E. Rider, S. J. Stalnaker and W. P. Shaver.

Pigeon Roost Precinct, Kanawha District:—T. D. Pritt, William Bennett and J. C. Harold.

Falls Mills Precinct, Kanawha District:—T. H. Lockhard, E. H. Squires and D. W. Gibson.

Kanwls Creek Precinct, Kanawha District:—John Allen Isaac Fleming and John L. Fox.

Salt Lick Bridge Precinct, Salt Lick District:—John E. Morris, Ambrose Tonkin and John H. Hammer.

Burnsville Precinct, Salt Lick District:—W. H. Bodkin, S. C. Hefner and A. J. Knight.

Copen's Run Precinct, Salt Lick District:—B. F. Jamison, W. B. Nutt and Charles Post.

The ballots used in taking said poll at said special election shall have written or printed thereon the words "For Subscription" or the words "No Subscription."

If it shall appear by the poll hereby authorized that not less than three-fifths of the voters of the County, who may have voted

34 upon the question of the proposed appropriation and subscription, were in favor of the same, such subscription will there-

after be made to the capital stock of the Weston and Elk River Railroad Company. Provided, said Railroad Company shall give a sufficient guarantee to the said County's agent or proxies that the proposed railroad shall be constructed, as aforesaid, within two years from the date said subscription is made.

Said subscription of sixty thousand dollars shall be paid in the coupon bonds of the County, each to be for the sum of five hundred dollars or some multiple thereof, and to bear interest at the rate of six per centum, per annum, the interest to be paid annually, and the principal to be redeemable in thirty years, or at the pleasure of the County after ten years from the date thereof; which bonds shall be received by said corporation, in payment of the subscription aforesaid, at par. Such bonds are to be issued as prescribed and directed by law.

This order shall be published in the Braxton Democrat and the Braxton Central, newspapers published in said County of Braxton, and otherwise throughout the said County for the period of time and in the manner prescribed by law."

A Copy.
Teste:

E. W. HEFNER, *Clerk.*

STATE OF WEST VIRGINIA, *County of Braxton, To-wit:*

The commissioners of the County Court of said County convened in special session at the court house on the 13th day of April, 1889, for the purpose of examining the returns of the election held on the 8th day of April, 1889.

Present, Samuel Fox, President, and T. S. Colter and J. B. Norman, gentlemen, commissioners.

The court having carefully and impartially examined the returns of the election held in this County, in each District thereof, on the 8th day of April, 1889, upon the question of subscription by the said County of Braxton to the capital stock of the Weston and
35 Elk River Railroad Company, to the extent of the sum of sixty thousand dollars in the coupon bonds of said County, doth ascertain that at said election held as aforesaid.

For Subscription received one thousand eight hundred and forty eight votes.

No Subscription received one hundred and eighty three votes.

It therefore appears by the said poll that not less than three-fifths of the voters of said county who voted upon the question of the said proposed subscription are in favor of the same.

Ordered that this court do now adjourn.

SAMUEL FOX, *President.*

Teste:
E. W. HEFNER, *Clerk.*

A Copy.

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

To the Clerk of the County Court of said County:

The public interest requiring it, I Samuel Fox, President of the County Court of Braxton County, hereby call a special session of said court, to be held at the court house of said county, on Monday the 29" day of April, 1889, for the following purposes: To cause to be subscribed for and on behalf of said County, and "The County Court of Braxton County" as a corporation, Sixty thousand dollars, to the capital stock of The Weston and Elk River Railroad Company; to provide for issuing coupon bonds, to pay such subscription, and to perform all other necessary acts, as such court, authorized or required to legalize and make effectual such subscription. Given under my hand as such president of such court, this the 23rd day of April, 1889.

SAMUEL FOX,
President of the County Court of Braxton County.

Teste:
C. K. NEWLON,
Clerk of the County Court of Braxton Co.

36 We the undersigned commissioners of the County Court of Braxton County, concur in the foregoing call for a special session of said County Court, to be held on the 29" day of April, 1889, and hereby acknowledge notice of the time for holding the same.

Given under our hands, this 23rd day of April, 1889.

T. S. COLTER,
J. B. NORMAN,
Commissioners.

Teste:
C. K. NEWLON,
Clerk of the County Court of Braxton County.

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

At a special session of the County Court of the County of Braxton, West Virginia held at the Court House thereof, on Monday, April 29, 1889, for the purpose to cause to be subscribed for and on behalf of said County and "The County Court of Braxton County" as a corporation, Sixty thousand dollars to the capital stock of "The Weston and Elk River Railroad Company," to provide for issuing coupon bonds to pay such subscription, and to do and perform all other necessary acts as such court, authorized and required to legalize and make effectual such subscription; Present, Samuel Fox, President, and J. B. Norman and T. S. Colter, commissioners.

This special session of the court having been called by the President thereof and with the concurrence of J. B. Norman and T. S. Colter, commissioners; and all the commissioners having had more that twenty four hours' notice of the time appointed for, and the

purposes of this special session of the court. It appearing further to the court by the following mentioned notice of the time for this special session of the court and the purposes for which it is on this day being held, was posted by the Clerk of this court, at the front door of the Court House of this County for more than two days, to-wit: Five days before this special session of the court was to be held, which notice and call of the President to-
37 gether with the concurrence of J. B. Norman and T. S. Colter, commissioners and certificate of said Clerk, are in the words and figures as follows:

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

To the Clerk of the County Court of said County:

The public interest requiring it, I, Samuel Fox, President of the County Court of Braxton County, hereby call a special session of said court, to be held at the Court House of said County, on Monday the 29" day of April, 1889, for the following purposes: To cause to be subscribed for and on behalf of said county, and "The County Court of Braxton County" as a corporation Sixty thousand dollars, to the capital stock of "The Weston and Elk River Railroad Company;" to provide for issuing coupon bonds, to pay such subscription, and to do and perform all other necessary acts, as such court, authorized and required to legalize and made effectual such subscription. Given under my hand as such President of such court, this 23 day of April 1889.

SAMUEL FOX,
President of the County Court of Braxton County.

Teste:
C. K. NEWLON,
Clerk of the County Court of Braxton County.

We the undersigned commissioners of the County Court of Braxton County, concur in the foregoing call for a special session of said County Court to be held on the 29 day of April, 1889, and hereby acknowledge notice of the time for holding the same. Given under our halds this 23rd day of April, 1889.

T. S. COLTER,
J. B. NORMAN,
Commissioners.

STATE OF WEST VIRGINIA, *Braxton County To wit:*

I, C. K. Newlon, Clerk of the County Court of said County, do certify that on the 23d day of April, 1889, I posted and left
38 posted up at the front door of the Court House of Braxton County a copy of the foregoing notice. Given under my hand this 23d day of April, 1889.

C. K. NEWLON,
Clerk of the County Court of Braxton County.

The court now proceeding to act upon the matters, objects and purposes for which this special session of the court is now being held, and it appearing to the court that pursuant to, and in accordance with, an order of this court made on the 5th day of March, 1889, that the election and poll, authorized and directed by said order of the 5th day of March, 1889, was held and taken at all the voting places in this county, and as directed by said order, and as required by law, on the 8th day of April, 1899, upon the question thereby submitted, appropriating by this county, Sixty thousand dollars, to be subscribed to the capital stock of "The Weston and Elk River Railroad Company, a corporation existing under the laws of the State of West Virginia, to aid in the construction of a Railroad, to commence at or near the town of Weston, in the County of Lewis, and State of West Virginia, and to run thence by the most practicable route to some point at or near the town of Sutton, in the County of Braxton, in the State aforesaid; and it further appearing to the court that more than three-fifths of the voters of this County, who voted at said election upon the question so submitted to them, by said order of the 5" day of March, 1889, voted in favor of such appropriation and subscription of Sixty thousand dollars, to the capital stock of said company, as to the court it fully appears by the certificate of the result of said election and poll, by order made by said court on the 13" day of April, 1889, in the words and figures following:

"The court having carefully and impartially examined the returns of the election held in this County, in each District thereof, on the 8" day of April, 1889, upon the question of sub-
39 scription by the said County of Braxton to the capital stock of the Weston and Elk River Railroad Company, to the extent of the sum of Sixty thousand dollars, in the coupon bonds of said County, doth ascertain that at said election held as aforesaid,

"For subscription received One thousand eight hundred and forty eight votes,

"No subscription received one hundred and eighty three votes,

"It therefore appears by the said poll, that not less than three fifths of voters of said county who voted upon the question of the said proposed subscription are in favor of the same."

It appearing to the court that the indebtedness of this county, including the indebtedness of the county to be occasioned by such subscription of Sixty thousand dollars in the aggregate will not exceed five per centum of the value of the taxable property in this county, ascertained by the last assessment thereof for State and County taxes. It is therefore considered, and it is accordingly ordered and directed by the court that a subscription of Sixty thousand dollars, for and on behalf of this County, and of the County Court of Braxton County, as a corporation, be made to the capital stock of "The Weston and Elk River Railroad Company," and W. E. Haymond is hereby appointed and Agent to make such subscription of Sixty thousand dollars, to the capital stock of said Company, for and on behalf of the county of Braxton, and the

County Court of Braxton county, as a corporation, upon the terms and conditions specified in the order under which said vote was taken, and which said subscription of Sixty thousand dollars, shall be paid in the coupon bonds of this County, and the County Court of Braxton County, as a corporation, at par, in sums of Five hundred dollars each, or some multiple of that sum, and to bear interest from the first day of June, 1889, at the rate of six per centum, per annum, and the principal of every such bond
40 to be redeemable in thirty years, or at the pleasure of the County or the County Court of Braxton County, after ten years, both principal and the several coupons, which coupons shall represent the annual accruing interest to be paid annually, shall be payable at the National Exchange Bank of Weston," in the town of Weston, West Virginia. Every such bond and coupon shall be payable to bearer, contain a promise to pay the principal thereof and coupons, and that the faith of the County of Braxton, and the County Court of Braxton County, as a corporation, is to be thereby pledged to such payments. All such bonds shall be signed by the President of the County Court of Braxton County, and countersigned by the Clerk of this court, with the seal of the Court attached thereto, and the President of the County Court of Braxton County is directed to cause to be prepared printed bonds in conformity with the preceding requirements, to execute, and otherwise cause to be executed, the same, and to deliver the same to the Weston and Elk River Railroad Company, in payment of the said subscription for the County of Sixty thousand dollars, to the capital stock of said Company upon the application of the Board of Directors of said Company, if the guarantee required of said Company in the order of March 5", 1889, shall have been given to the said Agent or to the proxies for the county hereinafter appointed. Provision shall be made for the collection of a direct annual tax, sufficient to pay annually, the interest on such bonds and the principal thereof when due or redeemable, and further as directed by the fifty ninth section of chapter 54 of the code of West Virginia.

It is further ordered that G. H. Morrison, W. D. Rollyson and W. F. Morrison, be and they are hereby appointed proxies, to represent the stock so to be subscribed for the company and the County Court of Braxton County, as a corporation, to the capital stock of "the Weston and Elk River Railroad Company, when subscribed, any one of whom may act in the meetings of the stockholders of said Company, and to exercise all the powers conferred
41 hereby upon them as such proxies and according to law. The proxies and either of them and their survivors, either of whom may act, shall continue to act as such until their successors are appointed.

A Copy.
Teste:

E. W. HEFNER, *Clerk.*

At a County Court held for the County of Braxton, at the Court House thereof on Friday July 12", 1901. Present, Wm. J. Perrine,

President, and David Evans and John I. Bender, commissioners.

(The following order was entered:)

"It is ordered that E. G. Rider be appointed for the purpose and directed to have printed Thirty thousand dollars of coupon bonds of this county, of the denomination of Five hundred dollars each bearing four per cent. interest, payable semi-annually, the principal of which bonds shall not be demandable for thirty three years from the date of issue, but which may be paid off by said county, in whole or in part, at any time after ten years. And the said Rider is also appointed a commissioner for the purpose and directed to dispose of the said bonds, for and on behalf of the said county to the best advantage possible, and in all respects in accordance with the Act of the Legislature authorizing the issue and sale of said bonds. Said Rider shall report his proceedings to this court, and the said Rider is allowed $75.00 to be paid out of the Sinking fund to defray expenses of engraving and other expenses attendant upon the negotiation and sale of said bonds.

A Copy.

Teste:

E. W. HEFNER, *Clerk.*

42 At a Special session of the County Court held for the County of Braxton, at the Court House thereof, on Thursday December 27, 1900. Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, commissioners.

The following order was entered.

"Whereas there are now outstanding 116 negotiable bonds of $500 each, executed by the County Court of this County in the year 1890, for stock subscribed by said County Court to the West Virginia & Pittsburg Railroad Company, and which are commonly known as the Braxton County Railroad Bonds, and which bear interest at the rate of 6 per cent. per annum.

And whereas, this court deems it to the best interest of said County that an effort be made to refund the indebtedness represented by said bonds at a lower rate of interest. It is therefore ordered that E. G. Rider, be appointed Special Agent and Attorney to act for and in behalf of this court to secure such legislation as will enable said court to so refund said indebtedness, and to do any and all things necessary to carry out the intention of the court as set forth in this order, and said Agent or Attorney report his action to this court for its approval."

A copy.

Teste:

E. W. HEFNER, *Clerk.*

At a special session of the County Court held for the County of Braxton, at the Court House thereof, on Saturday April 27", 1901, present Wm. J. Perrine, President and David Evans, commissioners.

(The following order was entered:)

"E. G. Rider special agent and attorney to act for and in behalf of this County to secure legislation as will enable the court

to refund the indebtedness of the county owing by reason of its subscription subscribed to the capital stock of the West Va. & Pittsburg Railroad Company, this day presented his report, and it
appearing from said report that as such special agent and
43 attorney, he procured the necessary legislation to effect the
purposes intended, and exhibited to the court an act of the legislature passed — day of January, 1901, and the court having inspected the same doth approve it and hereby approves the action of said special agent.

It is therefore ordered that E. G. Rider, special agent and attorney aforesaid, be and is hereby retained as such for the purpose of negotiating a sale or transfer of all of the aforesaid outstanding indebtedness, and with power and authority to act hereunder in the sale and transfer of said bonded indebtedness under the act of the legislature aforesaid; and said special agent and attorney shall report his actions to this court at the next regular term.

A copy.

Teste:

E. W. HEFNER, *Clerk.*

To the Clerk of the County Court, Braxton County, West Virginia:

Take notice that there will be a special term of the County Court of said county held at the court house thereof on the 5th day of December, 1901, for the purpose of signing the Sixty five hundred dollar coupon bonds heretofore directed by this court to be sold, also to make such orders with respect thereto as to the court may seem proper, and further for the purpose of granting a license to sell sp-rituous liquors &c. at Frametown and Kittsville, in said County, and also for the purpose of transferring a license formerly granted by this court to W. H. Tompkins in the town of Sutton, to Oke Sutton, and to transfer a license formerly granted to P. F. Rush at Rosedale in said County to H. C. Campbell, and for the purpose of making an appropriation to repair the county road in Salt Lick District, from Burnsville down the Little Kanawha river to the Gilmer County line, and also for the purpose of rescinding an order
entered at a former term of this court *branting* to C. B.
44 Eakle a license to sell spirituous liquors &c. at Flatwoods in
said County, and also for the purpose of entering an order to receive bo-ds for renting and keeping of the Poor Farm for the coming year at the January term, 1902.

Given under our hands this 4 day of December, 1901.

WM. J. PERRINE, *President.*
DAVID EVANS, *Commissioner.*

Notice.

There will be a special session of the County Court of Braxton County held at the court house thereof on December 5, 1901, for the purpose of signing the Sixty five hundred dollar coupon bonds heretofore directed by this court to be sold, also to make such orders

with respect thereto as to the court may seem proper and further for the purpose of granting a license to sell spirituous liquors &c. at Frametown and Kittsville in said county, and also for the purpose of transferring a license formerly granted by this court to W. H. Tompkins in the town of Sutton to Oke Sutton, and to transfer a license formerly granted to P. F. Rush at Rosedale, in said County to H. C. Campbell, and for the purpose of making an appropriation to repair the county road in Salt Lick District, from Burnsville *donw* the Little Kanawha River to the Gilmer County line; and also for the purpose of rescinding an order entered at a former term of this court granting to C. B. Eakle a license to sell spirituous liquors &c. at Flatwoods in said county, and also for the purpose of entering an order to receive *binds* for renting and keeping of the Poor Farm for the coming year at the January term, 1902.

Given under my hand this 4" day of December, 1901.

C. K. NEWLON,
Clerk County Court.

I, C. K. Newlon, Clerk of the County Court of said County of Braxton, do certify that on the 4 day of December, *190L*, I
45 posted and left posted a copy of the foregoing notice.

Given under my hand this 5" day of December, 1901.

A Copy.
Teste:

E. W. HEFNER, *Clerk.*

At a special session of the County Court held for the County of Braxton at the Court House thereof on Thursday December 5th, 1901.

Present, Wm. J. Perrine, President and David Evans and John I. Bender, commissioners.

(The following order was entered:)

"It appearing to the court that pursuant to an order *heretofer* entered by this court directing E. G. Rider, who was by a former order appointed Special Agent and attorney for the County of Braxton to have printed and signed 60 five hundred dollar coupon bonds of said County, and to dispose of same to the best possible advantage, and in further pursuance of said order the said Rider has caused said bonds to be printed and signed and has contracted with the State of West Virginia, for the sale of the whole amount of same at their par value. It is therefore ordered by the court that the said Rider, Agent and attorney for the purposes as aforesaid, ascertain who now holds the original bonds, for which the proceeds of this sale is to pay off and discharge, and to notify the holders on or before the 1st day of January 1902 and that interest on the same will stop on that date. And it further appearing to the court that the action of said Rider in the premises, as agent for said court, has resulted in a large saving to the tax payers of the County. It is therefore ordered by the court that said Rider be allowed the sum of $600.00 for his services as aforesaid, and the compensation

thereof as provided in this order, said allowance to include payment for his services in securing the Act of the Legislature necessary to the refunding of the original bonds of said County, also
46 the amount expended by him for the printing of said bonds and all other expenses in the performance of the completion of the sale of same.

A Copy.
Teste:

E. W. HEFNER, *Clerk.*

FRIDAY, *Dec.* 6, 1901.

Court sat pursuant to adjournment of yesterday, present the same commissioners.

The proceedings of the court on yesterday were this day read in open court, approved and signed by the President.

(The following order was entered.)

It appearing to the court that the sixty $500.00 negotiable coupon bonds which have been issued, as more fully set out in an order entered by this court on the 27 day of April, 1901, is not sufficient to pay off and take up the old outstanding 6% bonds, it is therefore ordered that twenty more of the 4% bonds similar to those described in said former order be prepared, issued and sold in the same man-er as provided for in said former order. But E. G. Rider who is hereby retained as agent and attorney to carry out the object of this order, having been paid for his services herein is required to do such work as is necessary under this order without further compensation.

A Copy. Teste:

E. W. HEFNER, *Clerk.*

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

47 EXHIBIT "C."

STATE OF WEST VIRGINIA:

At a regular term of the Supreme Court of Appeals, continued and held in Charleston, County of Kanawha, February 24th, 1905, *1905*, the following order was made and entered, to-wit:

A. T. TAYLOR ET AL., Plaintiffs Below,
vs.
COUNTY COURT OF BRAXTON COUNTY ET AL., Defendants Below;
JAS. V. TULLY, Appellant.

Upon an appeal from and supersedeas to a decree of the Circuit Court of Braxton County, pronounced on the 7th day of July, 1903.

For reasons appearing to the Court, it is now ordered and decreed that the decree entered in this cause by this Court on the 14th day of February, 1905, is set aside and annulled.

And now, the Court, having maturely considered the transcript of

the record of the decree aforesaid, and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said decree. It is therefore adjudged, ordered and decreed that the decree of the Circuit Court of Braxton County, pronounced in this cause on the 7th day of July, 1903, in so far as it in any way relates to or impairs the validity of, or affects, any of the county orders issued to Jas. V. Tully, or his assignees, or of the levy for bridge purposes, be and the same is hereby set aside, reversed and annulled; and that the appellee, A. T. Taylor, do pay to the appellant, Jas. V. Tully, his costs about the prosecution of his appeal and supersedeas in this Court in this behalf expended. And this Court proceeding to enter such decree in this cause as the Circuit Court of Braxton County should have entered, it is adjudged, ordered and decreed that the injunction be, and the same is hereby dissolved, and that the plaintiff's bill, in so far as it relates to the said orders and levy, be and the same is hereby dismissed for want of equity, and that the plaintiff, A. T.
48 Taylor, do pay to the defendant, Jas. V. Tully, his costs about his defense in the Circuit Court of Braxton County, in this behalf expended: which is ordered to be certified to the Circuit Court of Braxton County.

The decision of points in the foregoing cause as the same appears from the syllabus and written opinion prepared by Judge Poffenbarger was concurred in by Judges Brannon, McWhorter, Cox and Sanders.

A true copy.

Attest: WM. B. MATHEWS, *Clerk.*

Taxation of Costs.

A. T. TAYLOR, &c.,
vs.
THE COUNTY COURT OF BRAXTON COUNTY.

Reversed and Bill dismissed Feb. 14, 1905.

Costs in the Supreme Court of Appeals.

Appellant's Costs:	
Clerk	$10.80
Printing Record	146.25
Clerk of Circuit Court for Transcript	60.30
Sheriff serving process	
—— serving notice	
Order of Publication Charleston Mail	7.45
Attorney	30.00
Appellee's Costs:	
Clerk including petition for rehearing	4.60
Printing Record	

Clerk of Circuit Court—supp'l Transcript.....
—— serving notice .....
Damages, Code Chap. 135, Sec. 27.....
Attorney .....

49 Attest: WM. B. MATHEWS, *Clerk.*

(Endorsement:) To Circuit Court of Braxton County. A. T. Taylor, &c., *v.* The County Court of Braxton Co. State *ex rel.* Dillon *v.* County Court of Braxton. Mandate and Costs.

EXHIBIT "D."

Corrected Estimate.

Current expenses, salaries &c.		$15054.17
Commissioners, delinquent list and exonerations.....		3300.00
Roads		7719.00
		26073.17
Interest on R. R. bonds, current year.....	$2230.00	
Overdue interest	825.00	
Sinking fund for R. R. bonds.....	5000.00	
6% R. R. bonds overdue.....	10000.00	
		18055.00
Outstanding Tully orders	7770.00	
Interest on same about	2690.00	
		10460.00
Balance due on jail contract.....	15000.00	15000.00
Outstanding County orders.....	9421.00	9421.00
		79009.17

50 (Endorsement:) Filed in open Court, Aug. 9, 1906. Wm. B. Mathews, Clerk.

(Evidence on Behalf of Respondents.)

I.

STATE OF WEST VIRGINIA, *Kanawha County, To-wit:*

Jacob Huffman, being duly sworn on his oath says that he was a member of the County Court of Braxton County West Virginia at the time the annual levy for 1906 was laid and is still a member of said Court, that at the time said levy was made the Clerk of said Court under the direction of said Court made up a statement from the records in his office to be used in making the estimate for said levy, and that from said statement it appeared that there were outstanding County orders of a general nature on the County fund

amounting to $9421.00 and on account of the Bridge Fund known as the Tully order $7770.00, and that there was necessary to be paid during the said year on the contract for building the jail a balance of $15000.00 and also upon the Frametown Bridge $6000.00. And affiant says that he verily believes that said items were correctly reported by said Clerk and the same were placed in the estimate for said levy.

And affiant further says that he verily believes that the item in said estimate of $12600.00 for salaries of Officers, witnesses, jurors, Allowances for the Poor and other expenses is much below the amount that will be required for said purposes during said year and that it will require at least $15000.00 for said purpose, and that it will require at least $5000.00 to keep up the roads during said year which was not included in said estimate, but a levy of 5 cents was laid for that purpose.

Affiant further says that there was outstanding at the time said levy was laid $10000.00 of the 6% railroad bonds issued in
51 1889. And also that the County jail was built by Winchell & Elliott in accordance with their contract which has been offered in evidence in this case, and is practically completed.

JACOB HUFFMAN.

Subscribed and sworn to before me this 9th day of August, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of W. Va.

(Endorsement:) Affidavit of Jacob Huffman. Filed Aug. 9, 1906, as evidence on behalf of respondents. Wm. B. Mathews, Clerk.

52 II.

No. 143.

In the Supreme Court of Appeals of West Virginia, Wheeling.

A. T. TAYLOR ET AL., Defendants Below, Appellees,
vs.
THE COUNTY COURT OF BRAXTON COUNTY ET ALS., Plaintiffs Below;
J. V. TULLY, Appellant.

Appeal and Supersedeas Allowed October 21, 1903, from Decree Dated July 7, 1903.

From the Circuit Court of Braxton County.

Judges:
Hon. Henry C. McWhorter, President.
Hon. Henry Brannon.
Hon. Marmaduke H. Dent.
Hon. George Poffenbarger.
Hon. Warren Miller.
Wm. B. Mathews, Clerk.

53 In the Supreme Court of Appeals of West Virginia, Wheeling,

A. T. TAYLOR ET AL., Defendants Below, Appellees,
vs.
THE COUNTY COURT OF BRAXTON COUNTY ET ALS., Plaintiffs Below;
J. V. TULLY, Appellants.

Appeal and Supersedeas, Allowed October 21, 1903, from Decree Dated July 7, 1903.

From the Circuit Court of Braxton County.

Petition.

In Chancery. In the Circuit Court of Braxton County, West Virginia.

A. T. TAYLOR, &c.,
vs.
THE COUNTY COURT OF BRAXTON COUNTY AND OTHERS.

To the Honorable the Judges of the Supreme Court of Appeals of West Virginia:

Your petitioner, James V. Tully, one of the defendants in the above styled cause, respectfully represents that on the 13th day of July, 1899, the County Court of Braxton county, West Virginia, entered into a contract with The Canton Bridge Company
54 for the erection of the superstructure of five steel bridges to be erected in said county at the following designated points, viz: Across Oil creek at Confluence, across Oil creek at Burnsville, and across Taylor's run, Frame's run and Old Woman's run on the Elk river road, at an aggregate cost of $3,935.00, to be paid for out of the levy of 1899; on the 5th day of October, 1899, the said court awarded to defendant, James V. Tully, the contract of building the abutments to four of said bridges, namely, across Oil creek at Burnsville, and across Frame's run, Taylor's run and Old Woman's run on the Elk river road, at the price of $7.45 per cubic yard for stone work, $1.00 per square yard for excavations, and $20.00 per thousand feet for lumber used as foundations for abutments, and in the order awarding this contract it was stipulated that one-half the cost of such work should be paid out of the levy of 1899, and the other half out of the levy of 1900; on the 4th day of January, 1900, said court entered an order by which the contract for building the said abutments was let to the said Tully at the same prices mentioned above, and in this order it was stipulated that the whole of the contract price should be paid out of the levy of 1899.

On December 15th, 1899, the said court accepted the superstructure of the bridges across Frame's run and Taylor's run, on the Elk river road, and drafts were drawn in favor of the Canton Bridge Company for $315.00 and $420.00, the contract price for said

bridges, respectively, payable out of the levy of 1899, and on the 16th day of December, 1899, said court received the abutments for said two bridges from the said Tully and drafts were drawn in his favor for sums aggregating $2,351.77, all payable out of the levy of 1899.

On the 27th day of April, 1900, said court received the abutments for the bridge across Old Woman's run, on the Elk river road, and drafts were drawn in favor of said Tully for sums aggregating $3,796.35 for said work, and on May 29th, 1900, the superstructure of said bridge was received and a draft drawn in favor of the
55 Canton Bridge Company for $1,500.00, all of which drafts were made payable out of the levy of 1899.

On July 6th, 1900, said court received the abutments for the bridge across Oil creek at Burnsville, and drafts were drawn in favor of said Tully, in payment for same, for sums aggregating $1,789.52, payable out of the levy of 1899; and on March 7th, 1901, drafts were drawn by said court in favor of the Canton Bridge Company for $575.00, the price of the Burnsville bridge, and $500.00 on the contract price of the Confluence bridge, payable out of the levy of 1900; and on the — day of ——, 190–, the said Canton Bridge Company was paid the residue of the contract price for the Confluence bridge by draft of that date, payable out of the levy of 190–.

On July 15th, 1900, Ira H. Greathouse, a member of said court, was empowered by said court to let to contract the building of the abutments for the Confluence bridge; the contract for this work was awarded to James V. Tully at the same price he received for the other abutments, and on January 3rd, 1901, a draft was drawn by said court in his favor for $800.00, and on July 11th, 1901, a draft for $1,745.00 for the abutments of the Confluence bridge.

On the 12th day of October, 1901, the plaintiff obtained his temporary injunction in this case. The bill on which said injunction was based alleges that at the date of the contracts for the superstructure of said bridges and the abutments for the same, there was not money with which to pay for said bridges and work; that the same created a debt payable out of future levies, and therefore void; the answer of James V. Tully denies the material allegations of plaintiff's bill, alleges that said bridges were imperative public necessities, and sets up as a bar to relief, in said answer and in the demurrer filed with same, that by reason of the laches of plaintiff, and those for whom he sued, in prosecuting their remedy, if any they had, the said plaintiff could not at this time maintain his suit; defendant Tully also sets up in his answer assignments made by him of certain of the drafts issued by said court in payment of said work, to The National Exchange Bank of Weston, Frank H. Kidd and
56 others, who were by an amended bill made parties to this suit, and said bank and said Kidd filed their demurrers and answers to plaintiff's bills, setting up substantially the same facts as those contained in the answer of James V. Tully.

Such proceedings were had in the case, as that on the 9th day of May, 1902, the Circuit Court overruled the demurrer of defendants, refused to dissolve the temporary injunction, and referred the case to E. S. Bland, Commissioner, with direction to ascertain what

money the County Court had at the date of said contracts, and applicable thereto, which of the drafts issued for said work had been assigned, to whom, and the date of such assignments, and any other pertinent matter. Commissioner Bland departed this life before the execution of this order, and the same was executed, under order of said court, by C. H. Bland, Commissioner.

At the date of the contract for the bridges and work aforesaid, the County Court of said county had on hands, in contemplation of law, about the sum of $6,000.00, exclusive of the levy of 1899, the greater portion, if not all, of which was due from ex-Sheriffs; against this fund there was certain indebtedness on account of the erection of a bridge across Elk river at Sutton, and the contract under which said indebtedness was based is plainly illegal on its face, said contract showing that said bridge was to be paid for out of the levies of the years 1892, 1893 and 1894. Two orders issued under this contract were unpaid at the date of the Canton Bridge Company and Tully contracts, one dated January —, 1893, for $2,184.97, the other dated May 10th, 1893, for $988.34, both with interest from date. Counsel for James V. Tully appeared before the Commissioner and asked that in ascertaining what funds the County Court had at the date of his contract, the amount due under the contract with the American Bridge and Iron Company, with whom the contract for the Sutton bridge was made, and to whom the drafts last above mentioned were made payable, be not considered, because of their illegality, and by reason of which they could not be considered as indebtedness to the prejudice of Tully.

57 On April 25th, 1903, the Commissioner filed his report, to which James V. Tully excepted, because said Commissioner, in making his report as to funds on hand, considered the American Bridge and Iron Company claims as legal indebtedness, and in this exception Tully asked that said American Bridge and Iron Company, and The First National Bank of Grafton, its assignee, be made parties to the suit.

On July 7th, 1903, the case was heard upon the Commissioner's report, and upon all the papers filed in the case, and the temporary injunction of October 12th, 1901, was made perpetual, except as to drafts issued for abutments for Confluence bridge, and as to said drafts, said injunction was dissolved. By this decree James V. Tully claims to be aggrieved.

A complete transcript of the record of the proceedings in said cause, and of the orders and decrees entered therein, is herewith exhibited.

Your petitioner represents to your Honorable Court that the said orders and decrees are erroneous in the following particulars:

First. The court erred in overruling the demurrer of defendant Tully to plaintiff's bill, and in not dissolving said temporary injunction, at the date said cause was referred to E. S. Bland, Commissioner.

Second. The court erred in referring said cause to E. S. Bland, Commissioner.

Third. The court erred in refusing to make The American Bridge

and Iron Company and The First National Bank of Grafton parties to this suit.

Fourth. The court erred in not holding the order of the County Court of Braxton county, dated November 17th, 1892, with The American Bridge and Iron Company, and the drafts issued under said order, and the order of said court of October 4th, 1901, refunding the debt created under said contract void as to said Tully's debt, and in refusing to decree the money represented by said drafts to be paid on the drafts issued to said Tully and assigned by him, as shown by the record.

58 Fifth. The court erred in refusing to hold the assignees of said Tully of the orders so issued to him under his said contract with said County Court, innocent purchasers for valuable consideration, and in refusing to direct the same paid out of the levies made by said court.

Sixth. The record clearly shows that the plaintiff and those for whom he sued had notice of the contract between the County Court and James V. Tully, at the time said contract was entered into; had notice that said Tully was performing said work and expending large sums of money under said contract; had notice that the work performed by said Tully had been accepted by the County Court and the drafts complained of issued therefor; that plaintiff and those for whom he sued were in possession of, and using the work performed by said Tully for nearly two years prior to the institution of said suit, as to part of said work, and more than one year as to all of it, and the court erred in refusing to dissolve said injunction on account of the laches of the plaintiff and those for whom he sued, and in not directing the drafts for said work paid.

Seventh. The court erred in not holding the work and labor performed by said Tully, a work of public necessity, and in not dissolving said injunction for that reason.

Eighth. The court erred in refusing to dissolve said injunction in so far as it relates to the drafts issued for the abutments for bridges across Frames' run, Taylor's run, and Old Woman's run, on the Elk river road, and across Oil creek at Burnsville, and in entering the final decree of July 7th, 1903, perpetuating said injunction as to said drafts.

For the errors aforesaid, and for other errors appearing in the record of said case, your petitioner prays that an appeal and supersedeas may be awarded him, in order that said record, orders and decrees before you may be caused to come, that the whole matter in said record contained may be reheard, and that said orders and decrees may be reversed and annulled.

JAMES V. TULLY,
By Counsel.

LINN, BYRNE & HINES,
DULIN & FOX,
Attorneys.

59 & 60 I, Alex. Dulin, an attorney practicing in the Supreme Court of Appeals of West Virginia, do certify that in my opinion the orders and decrees complained of in the foregoing petition ought to be reviewed by the Supreme Court of Appeals.

Given under by hand this the 9th day of October, 1903.

ALEX. DULIN.

STATE OF WEST VIRGINIA, *To wit:*

Upon the foregoing petition an appeal and supersedeas is granted, and the penalty of the appeal bond is fixed at two hundred dollars.

Given under my hand as one of the Judges of the Supreme Court of Appeals, this 21st day of October, 1903.

HENRY BRANNON.

To Wm. B. Mathews, Esq., Clerk of said Court.

61 *Record.*

In Chancery.

A. T. TAYLOR
vs.
THE COUNTY COURT OF BRAXTON COUNTY ET AL.

Pleas Before the Circuit Court of the County of Braxton, at the Court House Thereof, on the 7th Day of July, 1903.

Be it remembered that heretofore to-wit, in the vacation of the said Court, on the 12th day of October, 1901, the following order was entered in said cause:

The injunction prayed for in the foregoing bill is awarded, restraining, inhibiting and enjoining the payment of the drafts and allowances of the County Court of Braxton County to J. V. Tully, Canton Bridge Company and F. H. Kidd, in said bill mentioned, in so far as the same remains unpaid; and the said County Court of Braxton is restrained from enforcing and collecting the levy for the year 1901, designated as levy for bridge fund; and the sheriff of the county of Braxton is restrained and enjoined from the collection of any part of the said levy from any of the taxpayers of the County of Braxton for the year 1901; but this injunction shall not take effect until the plaintiff shall give bond in the sum of $1000, conditioned according to law.

Given under my hand this the 12th day of October, 1901.

W. G. BENNETT,
Judge of the 11th Judicial Circuit of West Virginia.

To J. H. Lorentz, Clerk of the Circuit Court of Braxton County.

The bill *refered* to in the foregoing order, together with the exhibits filed therewith, is in the words and figures following:

Bill of Complaint.

To the Hon. W. G. Bennett, Judge of the Circuit Court of Braxton County:

The bill of complaint of A. T. Taylor, a taxpayer of the
62 County of Braxton, on behalf of himself and of all other taxpayers of the County of Braxton against The County Court of Braxton County, J. V. Tully, the Canton Bridge Company, a corporation, F. H. Kidd, and George Goad, Sheriff of Braxton County, filed in said Court.

The plaintiff complains and says that the defendant, the County Court, on the 13th day of July, 1899, by an order entered on its order book, contracted with defendant, Canton Bridge Company for the construction of certain iron bridges with-in the County one at the mouth of Oil Creek, at the price of $575.00; one at Confluence at the price of $1125; one at Taylor's Run, at the price of $420.00; one at Frame's Run at the price of $315.00; and one at Old Woman's Run, at the price of $1500.00; and by an order of said Court made on the 15th day of December, 1899, it receives the bridges for Taylor's Run and Frame's Run, and allows the prices therefor above stated; and by an order of said Court made on the 29th day of May, 1900, the said Court received the said bridge at Old Woman's Run, and allowed said Canton Bridge Company the price thereof, above stated, $1500, payable out of the County fund of 1899; and on the 7th day of March, 1901, the said County Court made an order allowing the said Canton Bridge Company $575.00, being in full for the bridge at the mouth of Oil Creek, and $500.00, part on bridge at Confluence, payable out of levy of 1900.

The order first above mentioned which constituted the contract between the County Court of Braxton County and the Canton Bridge Company provided that "Said work to be paid for out of the levy of 1899, but the plaintiff charges upon information, which he believes to be true, that it was then well known by the County Court of Braxton Co-nty and by said Canton Bridge Company that there would be no funds from the levy of 1899 *suficient* to pay the said contract price; and that in fact the said contract was made with the understanding that it would have to be paid out of the levies of future years, and the same was a violation of law, and void; and the plaintiff says that there was not provided by the said
County Court by its levy for the year 1899 a fund for the
63 payment of said amount so contracted to be paid the said Canton Bridge Company and that the said contract was made at the levy term of said Court for the year 1899, and at a time the Court well knew that the whole thereof could not be paid out of the funds, for that year, and that it was contracting a debt contrary to law; and the Court well knew there was no fund, and in fact, there were no funds for the year 1899, at the time of the order of 29th

of May, 1900, allowing the $1500.00 for Old Woman's Run Bridge, above mentioned, although it allowed same and directed payment out of levy of 1899. Plaintiff avers that the purpose thereof was to conceal the illegality of the contract aforesaid.

The plaintiff says as he is informed and believes that drafts were issued for the said sums upon the sheriff, although there were no funds with which to pay the same, and the County Court has no right to issue such drafts, and the same should not be paid because they depend upon and are the result of the illegal contract aforesaid.

Plaintiff further says that on the 5th day of October, 1899 the said County Court of Braxton County entered into a contract with defendant J. V. Tully by which it awarded to the said Tully the contract of building abutments to be built in the county of Braxton, naming in said contract, and an order made by the said Court on that day, a bridge at Old Woman's Run, one at Frame's Run, one at Taylor's Run and one at Oil Creek, near the mouth thereof, and agreed to pay for said work the sum of $7.45 per cubic yard for stone work; $1.00 per cubic yard for excavation, and $20.00 per thousand feet for timber for foundations; and by the said order provided that the same should be paid for, one half out of the County fund of 1899, and the other half thereof out of the County fund for 1900, and the order recites that Tully appeared and gave bond in the sum of one thousand dollars.

The plaintiff says that in fact there was no fund for the year 1899 with which to pay the said contract price nor the one half thereof, and the said County Court and the said Tully knew that fact; that there was not contemplated, as plaintiff is informed and believes, by either of said parties that there should be such
64 fund for the year 1900, and the plaintiff says that the said contract was illegal and void; and it is especially so because of the contracting of the debt for the year in advance of the year in which the contract was made, as well as for the year 1899; and he says the same was wholly void, being contrary to law.

Plaintiff further says that by an order made by the said defendant County Court on the 4th day of January, 1900, the said Court pretended to award, and without any reference in said order to the order above named, the contract of building bridge abutments in the County, in the same language of the other order as to the bridges, *refering* to the same bridges, at the same price, reciting the giving of bond in the sum of one thousand dollars, and in all material respects the same as said order of 5th of October, 1899, except that it provides that the said work shall be paid for out of the County fund for the year 1899; and plaintiff avers that said order was made to cover up the illegality of the contract, but with the understanding on the part of the defendant County Court and defendant Tully, as plaintiff is informed and believes, that the same should be paid out of levies of future years; and he avers that the said parties were contracting a debt to be paid by the County in future years, knowingly and intentionally, and seeking purposely to evade the appearance thereof, and to conceal from the taxpayers the

true nature of the said contract; and the said defendants, the County Court and the said Tully well knew at the time of the order of 4th of January 1900, that there was no fund of 1899 with which said amount could be paid, and that they were creating a debt upon the County to be paid in future years, and there was no authority from the taxpayers whatever therefor; no vote of the people taken thereon, and same was wholly without authority of law.

Plaintiff further says that it was well known at the time of entering into said contract by both defendant County Court and defendant Tully, that the same would amount to large sums of money.

Plaintiff further says that by an order made by said defendant County Court on the 14th day of August, 1899, John Knight, Newton Cunningham and A. M. Lough were appointed to prepare plans and specifications for approaches and abutments for
65 bridges to be built by the Court as follows: Old Woman's Run, Oil Creek at mouth, Confluence, Frame's Run and Taylor's Run, but what said report was, if any was made, plaintiff does not know; and by an order of said defendant County Court made on the 13th day of July, 1900, Ira H. Greathouse, who was then a member of said Court, was *apointed* with power to contract abutments for bridge at Confluence, reciting that the Court had purchased an iron bridge, and desired it to be placed there; but it does not appear so far as plaintiff is advised, what if any, contract the said Greathouse made in relation thereto, but it does appear that the Court has been allowing claims and ordering drafts to be issued to defendant Tully on account of that bridge, as set out hereinafter.

The plaintiff further says that by an order made by defendant County Court April 27th 1900 it received the abutments made by said Tully in pursuance of said contract for the bridge at Old Woman's Run, and allowed him therefor in all, the sum of $3797.15, reciting the same as in pursuance of contract of 5th of October, 1899, and drafts ordered in sums as follows: $333.18, $250.00, $250.00, $300.00, $500.00, $100.00, $100.00, $100.00, $60.00, use Amos Bright & Co.; $30.00 use C. D. Weidenhammer; $28.17 use P. J. Berry & Co.; $95.80, use of C. C. Hawkins; $150.00 use of Curtain & Moon; and three drafts for the sum of $500.00 each payable to or for the use of F. H. Kidd, defendant; and ordered the same to be paid out of the levy of 1899, notwithstanding there was not as aforesaid any fund of levy of 1899 out of which same could be paid; but plaintiff is informed that the said drafts for the use of Amos Bright & Co., C. D. Weidenhammer, P. J. Berry & Co., C. C. Hawkins, Curtain & Moon have been paid, though not likely out of the 1899 fund; but the said drafts to the use of said Kidd have not been paid, as plaintiff is informed, or at least not all of the amount of them.

And the said defendant County Court by an order made 6th of July 1900 received the work of said Tully on the bridge abutments at the mouth of Oil Creek, and allowed him drafts therefor in the sums following: $1000.00, $500.00, $400.00, $300.00, $100.00, $100.00, $100.00, $30.00, and $59.52, aggregating the sum of
66 $2689.52, and ordered the same to be paid out of the County fund levy of 1899, although there was no fund of that year, as

aforesaid, out of which the same could be paid, and as plaintiff is informed and believes, the same has not yet been paid.

The plaintiff further says that the said defendant County Court by an order made by it on the 16 day of December, 1899, received the work of building abutments for bridges at Frame's Run and Taylor's Run from the said Tully, and allowed him therefor drafts as follows: $71.35, $50.00, $400.00, $300.00, $300.00, $500.00, $200.00, $530.42, making in all $2351.77, and directed the same paid out of the levy of 1899, although the said Court and the said Tully then well knew that there was no fund from levy of 1899 with *with* which to pay the same, and it has not been paid yet, as plaintiff is informed and believes, except partially, and plaintiff cannot state what portion thereof if any has been paid. And the whole amount of the said sum so allowed for the said bridge contracts is $12773.44 *cents*, besides some allowances to other persons for approaches to some of the bridges, which have been paid and were separate contracts; and besides the amounts intended to be allowed said Tully for bridge at Confluence. And the said Court for the year 1899 made a levy at its July term, for what it designated as for bridge debt, and for building new bridges of 12 1-2 cents on the $100.00 valuation, and that *leve* was intended to apply only partially to the contracts aforesaid, and the Court then well knew that the same would not be sufficient for the said sums, nor to pay any reasonable portion thereof, and the said Court could not then meet the necessary expenses of the County, and made a levy within the constitutional limit that would have been sufficient to pay the same; and the whole assessed value of all real and personal property for the year 1899 in said County was $2117479. which at the rate levied for bridges, and set apart by the Court for the payment of said contracts, and also for the payment of indebtedness on account of bridge work before that time, as stated in the said order, and there was and yet is indebtedness for other bridge work before the year 1899, would amount without calculating for any delinquency whatever, the sum of $2646.85; and it therefore clearly appears that the intention of the Court was to create
67 a debt by the said bridge contracts for future years, upon the County of Braxton, and the said defendant County Court did by reason of the said contracts unlawfully create, purposely, a debt that could not be paid either in the year 1899 or that year and the year 1900. And the said County Court at its July term, 1900, made a levy of 16 2-3 cents on the $100. valuation for the purpose as stated in the order of paying the indebtedness incurred in the erection of certain bridges; and at its July term, 1901, the said County Court made a levy of 16 2-3 cents on the $100. valuation for the purpose as expressed in its order, "of paying the indebtedness incurred in the erection of certain bridges and of erecting certain other bridges.

And the plaintiff avers that as he is informed and believes it was the intention and understanding between the defendant, the County Court, and the said defendant contractors, that the same should be provided for to run into years subsequent to the time of contract, that there yet remains owing on account of said bridges, and the said drafts issued something near $10000.00; that there is nothing of

record, so far as plaintiff knows, by which he can say the amount agreed to be paid for the bridge work at Confluence. But by an order made July 12th, 1901, said court allowed to defendant Tully $1745.00 on account of said work but it does not appear to be in full of said work.

Plaintiff *further* says, upon information which he believes to be true, that the said Court in awarding the said contracts did not give any opportunity for competitive bids on the work; that the work of building abutments was awarded at an extravagant price, and much more than would have been required if the same had been open to bidders, and as a consequence of the contractor receiving more per square yard than the work was actually worth; there was much more of the stone work put into the abutments of said bridges than was actually *nescessary*, and the cost was much greater than *nescessary*.

The plaintiff says that he will file with this bill copies of the
68 several orders of the said County Court, to be read as part of this bill.

The plaintiff therefore prays that an injunction may be awarded against the defendants and all of them restraining, enjoining and inhibiting the collection of the said several drafts and amounts so by the defendant County Court directed to be paid; that the defendant George Goad, Sheriff, be enjoined from the payment thereof; that the said levy made by the County Court for the year 1901 for bridge purposes as before set out, be declared illegal and void, and that the collection thereof be enjoined; that the said contracts between the said County Court and J. V. Tully, and between said Court and Canton Bridge Company be declared void; that all the matters of relief hereby asked, shall extend to and in behalf of all the taxpayers of the County of Braxton; that the plaintiff recover his costs in this suit.

Plaintiff also asks such other *further* and general relief as the Court may see fit to grant.

A. T. TAYLOR,
By Counsel.

W. E. HAYMOND, *Attorney.*

STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

A. T. Taylor the plaintiff named in the foregoing bill, being duly sworn, says that the facts and allegations contained in the foregoing bill are true, except so far as they are therein stated to be upon information; and that so far as they are therein stated to be on information, he believes them to be true.

A. T. TAYLOR.

Taken, subscribed and sworn to before me this 11th day of October 1901.

JAKE FISHER, *Notary.*

EXHIBITS.

At a County Court held for the County of Braxton at the Court house thereof on Thursday July 13th 1899.

69 Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans commissioners.

The Court this day entered unto a contract with the Canton Bridge Co. of Canton Ohio, represented by R. Merydith agent, for the erection of five steel bridges at *dif-erent* points in this County as follows: A bridge across Oil Creek at Confluence at the price of $1125.00; a bridge across Oil Creek at Burnsville at the price of $575.00; a bridge across Taylor's Run on the Elk river road at the sugar grove at the price of $420.00; a bridge across Frame's Run on the Elk river road near the sugar grove at the price of $315.00, a bridge across Old Woman's Run at the price of $1500.00. All of said bridges to be completed on or before the 10th day of December, 1899.

It is understood that the Canton Bridge Company is only to furnish all materials and construct and complete ready for travel the superstructure of said bridges, all of which is contained in the contract this day entered into between this Court and said Bridge Company, which together with the plans and specifications for said work are made part of this order, and ordered to be filed in the office of the Clerk of this Court, said work to be paid for out of the levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

At a special session of the County Court held for the County of Braxton at the Court house thereof on Friday, December 15th, 1899, Present, Ira H. Greathouse, President, and Wm. Perrine and *Dadid* Evans Commissioners.

It appearing to the Court that the Canton Bridge Company have completed two of the bridges, viz: one across Taylor's Run and one across Frame's Run on the Elk river road, in accordance with the contract with said Canton Bridge Company and this Court, dated the 13th day of July 1899. The Court doth therefore order that said bridges be received, and that said Canton Bridge Company be allowed

70 $420.00 for the Taylor Run bridge and $315.00 for the bridge across Frame's Run, payable out of the County fund levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a special session of the County Court held for the County of Braxton at the Court house thereof on Tuesday May 29th, 1900.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans Commissioners.

It appearing to the Court that the Canton Bridge Company have completed the bridge across Old Woman's Run at the head of Main street in the town of Sutton, in accordance with the contract between the said Canton Bridge Company and this Court, dated the 13th day of July, 1899; The Court doth therefore order that said bridge be received and that said Canton Bridge Company be allowed $1500.00 for said bridge, payable out of the County fund levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof on Thursday March 7th, 1901.

Present, Wm. J. Perrine, President, and David Evans and John I. Bender, Commissioners.

The Court doth order that the Canton Bridge Company be allowed Five hundred and Seventy-five dollars in full for the bridge across Oil Creek, near the mouth thereof; and that they be allowed the sum of $500.00 being a part on the Confluence Bridge, payable out of the County fund levy of 1900.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

71 *Order.*

A a County Court held for the County of Braxton at the Court house thereof on Thursday, October 5th, 1899.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans Commissioners.

The Court doth award to J. V. Tully the contract of the building of the abutments of the four bridges to be built in this County, viz: a bridge across Old Woman's Run at the east end of Main street in the town of Sutton, a bridge across Oil Creek near the mouth thereof, a bridge — Frame's Run and one across Taylor's Run on the public road leading from Sutton to Beall's Mill. Said work to be done according to the plans and specifications which *is* made part of this contract, at the price of $7.45 per cubic yard for the stone work, $1.00 per square yard for the excavation for the foundation for abutments, and $20.00 per thousand feet for timber used in foundations for abutments, one half of said work to be paid out of the County fund levy of 1899, and the other one half to be paid out of the County fund levy of 1900. And the said Tully this day appeared in open Court and together with sureties entered into and acknowledged a bond in the penalty of One thousand dollars, conditioned upon the faithful performance of all things

agreed by him to be done in specifications submitted by him and contract this day executed between this Court and said Tully.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof on Thursday January 4th, 1900.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, Commissioners.

The Court doth award to J. V. Tully the contract of the
72 building of the bridge abutments in the County, viz: a bridge across Old Woman's Run at the east end of Main street in the town of Sutton, a bridge across Oil Creek near the mouth thereof, a bridge across Frames Run and one across Taylors Run on the public road leading from Sutton to Beall's Mill said work to be done according to the plans and specifications which *is* made a part of this contract at the price of $7.45 per cubic yard for the stone work and $1.00 per square yard for the excavation, and for the foundation for the abutments, and $20.00 per thousand for the timber used in foundation for abutments, said work to be paid for out of the County fund for the year 1899, for all of which claims shall be issued as the work is completed and no interest is to be paid prior to issuing claims, and the said Tully appeared in open Court, together with sureties entered into and acknowledged a bond in the penalty of $1000.00 conditioned upon the faithful performance of all things agreed by *them* to be done in the specifications submitted by him and contract this day executed between this Court and said Tully.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a special session of the County Court held for the County of Braxton at the Court house thereof on Monday August 14th, 1899.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans Commissioners.

The Court doth appoint Newton Cunningham, John B. Knight and Able M. Lough to prepare plans and specifications for the approaches and abutments of the following bridges proposed to be built by this Court, to-wit: One across Old Woman's Run at the head of Main street in the town of Sutton; one across Oil Creek
where it flows into the Little *Kanawah* river, where the
73 County road crosses said Creek; one across Oil Creek at the town of Confluence; one across Frame's Run and one across

Taylor's Run where the road leading from Sutton to Frametown crosses said runs.

The said parties shall prepare said plans and specifications in writing, on separate sheets of paper in duplicate, and submit the same to Court for its approval at a special term to be held by this Court at the Court house of said County on the — day of September, 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof on Friday July 13th, 1900.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, Commissioners.

Whereas, the Court has purchased an iron bridge to be placed across Oil Creek, and across the Braxton and Lewis County line at Confluence, and is desirous of having the same erected at an early date; it is therefore ordered that Ira H. Greathouse be, and is hereby appointed a Commissioner to let to contract the erection of proper abutments and the construction of *suficient* approaches at the point selected for the placing of said bridge. All of said work shall be contracted to be done according to the plans and specifications now before this Court and shall be subject to its approval. Said commissioners shall let said work to the lowest responsible bidder and shall advertise the time and place of receiving all bids.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a special session of the County Court held for the County of Braxton at the Court house thereof on Friday April 27th, 1900.

74 Present Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, Commissioners.

It appearing to the Court that J. V. Tully has completed the abutments of the bridge across Old Womans Run at the head of Main street in the town of Sutton in accordance with the contract with said Tully and this Court, dated the 5th day of October 1899; the Court doth therefore order that said abutments be received, and that said J. V. Tully be allowed drafts as follows for said work: one draft for $333.18, one for $250.00, one for $250.00, one for $300.00, one for $500.00, one for $100.00, one for $100.00, one for $100.00, one for $60.00 use of Amos Bright & Co., one for $30.00 use of C. D. Weidenhamer, one for $28.17, use of P. J. Berry & Co., one for $95.00 use of C. C. Hawkins, one for $150.00

use of Curtin & Moon, one for $500.00 use of F. H. Kidd, one for $500.00, use of F. H. Kidd, one for $500.00, use of F. H. Kidd, payable out of the County fund levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof on Friday July 6th, 1900.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, Commissioners.

It appearing to the Court that J. V. Tully has completed the abutments of the bridge across Oil Creek at the mouth thereof, in accordance with the contract with said Tully and this Court, dated 5th day of October, 1899; the Court doth therefore order that the said abutments be received and that the said J. V. Tully be allowed drafts as follows for said work: one draft for $1000.00, one draft for $500.00, one draft for $400.00, one draft for $300.00, one draft for $100.00, one draft for $100.00, one draft for $100.00, one draft for $100.00, one draft for $30.00, one draft for $59.52, payable out of the County fund levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

75 *Order.*

At a special session of the County Court held for the County of Braxton at the Court house thereof Saturday December 16th, 1899.

Present, Ira H. Greathouse, President, and Wm. J. Perrine and David Evans, Commissioners.

It appearing to the Court that J. V. Tully has completed two of the abutments, viz: the abutments of the Taylor Run bridge and the abutments at the Frames Run bridge on the Elk river in accordance with the contract between said J. V. Tully and this Court, dated the 5th day of October 1899. The Court doth therefore order that the said abutments be received, and that said J. V. Tully be allowed drafts as follows for said work: one draft for $71.35, one for $50.00, one for $400.00, one for $300.00, one for $300.00, one for $500.00, one for $200.00, and one for $530.42 payable out of the County fund levy of 1899.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof on Tuesday, July 13th, 1899.

Present, Ira H. Greathouse, president, and Wm. J. Perrine and David Evans, commissioners.

The Court doth lay a levy of fifty cents on each One Hundred dollars' valuation of real and personal property as assessed in the County for the *ensueing* year for the purpose of defraying the contingent expenses of the County.

The Court doth lay a levy of sixteen and two thirds cents on each One Hundred dollars' valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying the interest on the bonded debt of the County.

The Court doth lay a levy of twelve and one half cents on
76 each One Hundred dollars' valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying the indebtedness incurred in the erection of certain bridges and the erecting certain other bridges.

The Court doth lay a levy of ten cents on each One Hundred dollars' valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of creating a sinking fund to pay the bonded indebtedness of the County.

The Court doth lay a levy of ten cents on each One Hundred dollars' valuation of real and personal property as assessed in Kanawha District of this County, to be used on the roads of said District.

The Court doth lay a levy of twenty-five cents on each One Hundred dollars' valuation of real and personal property as assessed in Holly District this County, to be used on the roads of said district.

The Court doth lay a levy of ten cents on each One Hundred dollars valuation of real estate and personal property as assessed in Salt Lick District, this County, to be used on the roads of said district.

The Court doth lay a levy of sixteen and two-thirds cents on each One Hundred dollars valuation of real estate and personal property as assessed in *other* District this County, to be used on the roads of said district.

The Court doth lay a levy of thirty-three and one-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in Birch District, this County, to be used on the roads of said district.

A copy,
Teste: C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton at the Court house thereof, on Friday July 13th, 1900. Present Ira H.
77 Greathouse, president and Wm. J. Perrine and David Evans, commissioners.

The Court doth lay a levy of fifty cents on each one hundred dollars valuation of real-estate and personal property as assessed in this County for the *ensueing* year for the purpose of defraying the contingent expenses of the County.

The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying the interest on the bonded debt of the County.

The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying for certain bridges erected in this County.

The Court doth lay a levy of ten cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of creating a sinking fund to pay the bonded indebtedness of the County.

The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in Holly District of this County to be used on the roads of said district.

The Court doth lay a levy of ten cents on each One Hundred dollars valuation of real estate and personal property as assessed in *Kanawah* District to be used on the roads of said district.

The Court doth lay a levy of five cents on each One Hundred dollars valuation of real estate and personal property as assessed in Salt Lick District of this County to be used on the *roads* of said district.

The Court doth lay a levy of sixteen and two-thirds cents on each One Hundred dollars valuation of real and personal property, as assessed in Otter District of this County to be used on the roads of said district.

78 The Court doth lay a levy of twenty-five cents on each One Hundred dollars valuation of real estate and personal property as assessed in Birch District of this County, to be used on the roads of said district.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton, at the Court house thereof, on Wednesday, July 10th, 1901.

Present, Wm. J. Perrine, president, and David Evans and John I. Bender, commissioners.

The Court doth lay a levy of fifty-five cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of defraying the contingent expenses of the County.

The Court doth lay a levy of twelve and one-half cents on each One Hundred dollars valuation of real estate and personal property,

as assessed in this County for the *ensueing* year for the purpose of paying the interest on the bonded debt of the County.

The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying the indebtedness incurred in the erection of certain bridges and of erecting certain other bridges.

The Court doth lay a levy of ten cents on each One Hundred dollars valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of creating a sinking fund to pay the bonded indebtedness of said County.

The Court doth lay a levy of twenty-five cents on each One Hundred dollars valuation of real estate and personal property as assessed in Holly District this County, to be used on the roads of said district.

79 The Court doth lay a levy of twelve and one-half cents on each One Hundred dollars valuation of real estate and personal property, as assessed in Salt Lick District, this County, to be used on the roads of said district.

The Court doth lay a levy of twenty-five cents on each One Hundred dollars valuation of real estate and personal property as assessed in Birch District, this County, to be used on the roads of said district.

The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars valuation of real estate and personal property as assessed in Otter District of this County, to be used on the roads of said district.

A copy,
Teste:

C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton, at the Court house thereof, on Thursday, July 11, 1901.

Present, Wm. J. Perrine, president, and David *Evens* and John I. Bender, commissioners.

The Court doth order that J. V. Tully be allowed out of the County fund a draft for $1500.00 for work on the Court house, and a draft for $1745.00 out of the bridge fund, ballance on abutments for the bridge at Confluence, and that he put fills in approaches to bridge near the mouth of Oil Creek or its representative.

A copy,
Teste·

C. K. NEWLON, *Clerk.*

At another day to-wit: on the 26th day of October, 1901, came the said plaintiff by counsel, into the Clerk's office of the said Court, and sued out his summons in Chancery against the defendants, The County Court of Braxton County, J. V. Tully, The Canton Bridge

Company, a corporation, F. H. Kidd and George Goad, Sheriff of Braxton County, in the words and figures following:

80 *Summons.*

At another day to-wit: at rules held for the said Court in the said Clerk's office on the first Monday in November, 1901, a decree *nisi* was entered in said cause against all the defendants except the Canton Bridge Company, a corporation, a non-resident of the State, and affidavit was made and order — publication awarded against it.

At another day to-wit: at rules held for said Court in said Clerk's office, on the first Monday in December, 1901, said bill was taken for confessed as to all the resident defendants, except J. V. Tully, who filed his answer, and order of publication duly published and posted as to the Canton Bridge Company, non-resident.

The answer *refered* to in the last foregoing order of J. V. Tully, is in the words and figures following:

Answer of J. V. Tully.

To the Honorable W. G. Bennett, Judge of the Circuit Court of Braxton County:

The demurrer and separate answer of James V. Tully to the bill of complaint, filed in the said Court, against him and others, by A. T. Taylor.

For demurrer to said bill, said defendant says, that the same is not *suficient* in law, and for grounds of demurrer, he says that bill is multifarious; that the Canton Bridge Co. is made a defendant thereto in respect to contracts entered into between it and the County Court of Braxton County, wherein this defendant had no interest, and that there is no privity between him and the Canton Bridge Co.; that it does not appear by the said bill that the said County Court has in fact exceeded its authority, and it does not appear that the resources from County levies were the only resources available for the payment of the amounts contracted to be paid for the work
81 *refered* to in the bill, and it does not appear that there is any *reasinable* excuse for the laches of the plaintiff in resorting to his said bill of injunction to restrain the payment of the sums contracted to be paid, and yet remaining unpaid, while it does appear that there has been such long delay, on the part of the plaintiff and the taxpayers of the County of Braxton, in whose behalf he prays, as to bar any relief to him or them; and the said bill is otherwise *insuficient* in law, because it does not appear that the indebtedness complained of as contracted or incurred, was beyond the money on hand and the levy of the current *fiscal* year of the contract; and the said bill is also otherwise *insuficient* in law.

And without waiving his demurrer, but insisting thereon, this defendant for answer to the said bill says:

That he has no personal knowledge or information of the matters alleged in the bill, with reference to the Canton Bridge Company, other than what is shown by the record, and hereinafter stated; and while he admits that an order was entered on the 13th day of July, 1899, with reference to the Canton Bridge Company, in effect as stated in the bill, and that other orders in relation to said Company were entered by said Court at the dates mentioned in the bill, making the allowances to said Company therein stated, this defendant upon information and belief denies the allegation "That it was then well known to the County Court of Braxton County, and by said Canton Bridge Company, that there would be no funds from the levy of 1899 *suficient* to pay the contract price, and that in fact the said contract was made with the understanding that it would have to be paid out of levies of future years, and the same was in violation of law and void."

This defendant, upon *infor,ation* and belief, alleges that before the institution of this suit all drafts appearing by the allegations of the bill to have been issued and made payable to the Canton Bridge Co., were in fact paid.

This defendant, upon information and *believ,* denies the allegation that there was not provided by the County Court, by its
82 levy for the year 1899, a fund for the payment of the amount contracted to be paid to the said Canton Bridge Co.; and denies that the Court well knew that the whole thereof could not be paid out of the funds for that year, and that it was contracting a debt contrary to law; and denies that the Court well knew that there was no fund for the year 1899, at the time of the order of the 29th of May, 1900, to pay the $1500.00 for the Old Woman's Run Bridge; and denies that the purpose of the order of that day was to conceal the illegality of the contract with said Canton Bridge Co. and upon information denies that any draft was issued as alleged in the bill, when there were no funds with which to pay the same, and when the Court had no right to issue any such draft.

This defendant admits that an order was entered by the said County Court on the 5th day of October, 1899, with reference to bridge abutments to be built by him, but alleges that in so far as was entered providing for the binding of levies of a future year, it was entered by mistake; and upon discovery thereof and upon the assurance by the Court made personally to this defendant that they had funds, and could lawfully contract with him for the erection of the abutments, and learning by inquiry that the Court had a large sum of money available for the purpose, independent of the levies of 1899, and arising from the arrearage due from the late Sheriff of the County on County funds, amounting to from ten to twelve thousand dollars; and believing the information which he so acquired, and the assurances of the Court, this defendant agreed to go on and complete the work of building the said abutments; and if there was any mistake in the entry of the order of January 4th, 1900, it was a clerical one, and did not arise from any lack of faith on the part of this defendant, or, so far as he knows, on the part of the said County Court; and in all matters pertaining to said contract, this defendant

acted in the utmost good faith, and used all the means at his command to ascertain the true condition of the finances of the County, and believed, and still believes, that the said County Court
83 was in like manner acting in good faith toward him, and within the scope of its powers and duties as regulated by law.

This defendant denies the allegation of the bill that "in fact there was no fund for the year 1899 with which to pay said contract price, nor the one half thereof, and the said County Court and the said Tully knew the fact; that there was not contemplated, as plaintiff is informed and believes, by either of said parties that there should be such fund for the year 1899, and the plaintiff says, that the said contract was illegal and void, that it is especially so, because of the contracting of the debt for the year in advance of the year in which the contract was made, as well as for the year 1899, and he says that the same was *wholy* void, being contrary to law."

This defendant also denies the allegation that the order of January 4th 1900, "was made to cover up the illegality of the contract, but with the understanding on the part of the defendant County Court, and defendant Tully that the same should be paid out of levies for future years, and he avers that the said parties were contracting a debt to be paid by the County in future years, knowingly and intentionally, and seeking *purposly* to evade the appearance thereof and to conceal from the taxpayers of the County the true nature of the said contract, and the said defendants, the County Court and said Tully, well knew at the time of the order of the 4th of January, 1900, that there were no funds of 1899 with which said amount could be paid, and that they were creating a debt upon the County to be paid in future years;" and denies the allegation that the same was *wholy* without authority of law.

This defendant denies the allegations of the bill, wherever appearing, that the County Court issued drafts to him for work done under his contract, payable out of the levy of 1899,when there were no funds with which to pay the same, and with a knowledge of the fact, though it may appear, and it may be true, that there
84 was not *suficient* funds to pay all of said drafts with other liabilities of the current year; but he denies that it was done in pursuance of any previous knowledge or understanding or agreement between the said County Court and this defendant, at the time the work was contracted for, that the funds or levies of any future year would have to be resorted to for the payment of said work, or any part thereof.

He also denies, upon information and belief, the allegation of the bill that the levy of 1899 was made by the County Court with knowledge that it would be *inusficien* to provide for its contracts of, and pay current expenses for, the year 1899, and for payment of indebtedness on account of bridge work before that time; and denies that it clearly appears, or that it was in fact the intention of the Court to create a debt by the said bridge contracts for future years upon the County of Braxton, and denies that the Court did unlawfully create, *purposly*, a debt that could not be paid either in the year 1899 or 1900.

This defendant also denies the allegation that it was the intention and understanding between said County Court and the defendant contractors that a debt should be provided for to run into the years subsequent to the time of contract.

This defendant denies that the work of building abutments was awarded at an extravagant price, and much more than would have been required if the same had been open to bidders, and denies that *ther* were more square yards of stone put into said work that was actually *nescessary* for a substantial and permanent job.

This defendant *furthur* states that while there may not have been any competitive bidding for the work undertaken by him, he nevertheless undertook the same at the lowest price for which work of a similar nature had been contracted, under contract let to the lowest bidder for the erection of the stone work in the bridge across the Little *Kanawah* river in Braxton County, which contract was awarded after due publication, and when there had been spirited and active competition, and at a time when the cost of labor was much
85 below its cost at the time the contract for building abutments was awarded to this defendant.

This defendant denies the allegation of the bill that the whole assessed value of all real and personal property for the year 1899, in the said County, was $2,117,479.00, and alleges that in *adition* to the sum last mentioned there was railroad property in the said County liable to taxation, the assessed value of which, for the year 1899, was $174652.73 and the levy for County purposes amounted for the year 1899 to about $20000.00, to which should be added the indebtedness then due from the Sheriff on account of levies for previous years.

This defendant alleges that the contract between him and said County Court for the building of the abutments to the bridge at Confluence was made on the — day of July, 1900, and after the levy term of said Court for the year 1900, that he was to be paid therefor, out of the levy of 1900.

This defendant *furthur* answering says that the plaintiff and those for *whome* he professes to sue, as taxpayers of Braxton County, have been guilty of gross laches in respect to the matters complained of and *alleg-* in the bill, and he pleads and relies upon such laches as a bar to any relief prayed for in the bill. This defendant says that the bridges so erected were of great and *imperitive* public necessity; that for years before the building thereof, the people of the County of Braxton were clamoring for the building of such bridges; that the orders and contracts made and entered into in relation to said bridges were matters of public and general knowledge throughout the County; that the orders were entered and contracts made in open Court; that the fact that such contracts had been awarded was made public by announcement in two weekly newspapers published in the said County and having a general circulation therein, and from time to time as the work progressed, and almost weekly, the progress was reported and references made to said work through the medium of said papers; that the plaintiff especially, and in fact the
86 taxpayers generally, throughout the County and the remotest parts thereof were fully aware that this defendant was engaged

in said work, laboring with his own hands, expending his time, his means and his muscle, obtaining credit upon the faith of his contract; that he alleges that his contract was not only, as hereinbefore stated, entered into with the utmost good faith, but was carried out and completed by the erection of said abutments in the most approved and substantial manner, in strict accordance with his contract; and in doing so he had to and did pledge the money, or, a large proportion thereof, falling due under his contract, to enable him to complete the work,and all this time the plaintiff and the said taxpayers stood by knowing of the said contract, and of the work that was being done thereunder, and taking to themselves the benefits accruing therefrom to them as citizens and property holders of the said County, and at the date of the institution of this suit were, and still are, enjoying the same; that the abutments of Old Woman's, Frame's and Taylor's Runs amounted to more than half the contract price, and the work on these abutments was done almost under the eye of the said Taylor, and with frequent expression of his approval of the character of the work; that the said Taylor lives within about 300 yards of Taylor's Run bridge, and that bridge is a great *convenienct* to him and has enhanced the value of the 400 acresof land owned by him, which is within sight of the location of the bridge, and which he has been using ever since its completion, and has to cross in traveling to and from the County seat, and he uses the Frame's Run bridge in like manner, said two bridges being on the Elk river road and being used by a very large proportion of the people residing in the lower part of the County; and this defendant is advised and insists that the taxpayers who stand by and view the work as it progresses, and until it is completed, having knowledge of the contract and the conditions under which the work is done, cannot in a Court of equity take to themselves the benefit of the work and invoke the enforcement of a constitutional provision limiting the
87 power of taxation, to the *predudice* of the contractor and the parties from *whome* he has obtained credit.

Furthur answering, this defendant says that before the institution of this suit, and before he was made aware that any suit would be entered to prevent payment of the drafts issued to him, payable out of County funds in the hands of the Sheriff, he, for a valuable consideration, transferred to various persons and the National exchange bank of Weston, certain of said drafts, and there are now due and payable to said bank, and to the persons following, on account of said drafts, sums of money amounting — about as follows: To the said bank $1500.00; to Joseph Fucey $3000.00; to F. H. Kidd $1833.00; to Miss Allie Rudkin $100.00; and to B. F. Fisher $100.00, all of whom this defendant on advice charges should be made parties defendant to the plaintiff's bill, because he alleges that if he is made liable for the amount of the said outstanding orders so transferred, he will be rendered insolvent.

And having fully answered all that he is advised it is *nescessary* for him to answer, this defendant prays that the injunction heretofore awarded in this cause be *wholy disolved,* and that the bill of the plaintiff be dismissed and that the defendant may recover against

the plaintiff the costs in the defense of said bill most unjustly expended.

JAMES V. TULLY,
By Counsel.

DULIN & FOX,
LINN, BYRNE & HINES, *Attorneys.*

STATE OF WEST VIRGINIA, *County of Braxton, To-wit:*

James V. Tully, the defendant named in the foregoing demurrer and answer, being duly sworn, says, that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information, he believes them to be true.

JAMES V. TULLY, *Defendant.*

88 Taken, subscribed and sworn to before the undersigned, a Notary Public for Braxton County, West Virginia, this the 26th day of November, 1901.

C. K. NEWLON,
Notary Public.

At another day, to-wit: on the — day of February, 1902, came the said plaintiff by counsel, and filed in the Clerk's office of the said court his amended and supplemental bill of complaint, which is in the words and figures following:

(The Amended and Supplemental Bill of Complaint.)

To the Hon. W. G. Bennett, Judge of the Circuit Court of Braxton County:

The amended and supplemental bill of complaint of A. T. Taylor, taxpayer of the County of Braxton, on behalf of himself and all other taxpayers of the county of Braxton, against

The County Court of Braxton County, J. V. Tully, The Canton Bridge Company, a corporation, F. H. Kidd, George Goad, Sheriff of Braxton County, The National Exchange Bank of Weston, Joseph Fuccy, Allie Rudkin and B. F. Fisher, filed in said Court.

Plaintiff complains and says that the defendant J. V. Tully filed his answer to the original bill in this cause in which he asserts that certain of the drafts issued to him by the County Court of Braxton County on account of the bridge contract in the original bill set out, were assigned by him to the said National Exchange Bank, certain others thereof, to the said Joseph Fuccy, a certain other draft to the said Allie Rudkins, and a certain other draft to the said B. F. Fisher; and in his said answer he asks that the said parties be made defendants to this suit.

Plaintiff further says that the allegations in his original bill are

intended to apply to all drafts issued to the said Tully on ac-
89 count of the said bridge contract, and that they are all included in the provisions of the injunction heretofore granted, and the plaintiff had no knowledge of the assignment of drafts to the new defendants at the time he filed his original bill.

The plaintiff therefore prays that the said National Exchange Bank of Weston, Joseph Fuccy, Allie Rudkin, and B. F. Fisher be made parties defendant to this suit, and that process issue against them, and that the relief prayed for in the original bill shall be granted, as to the new parties as well as all other parties to the suit.

The plaintiff also asks such other and *furthur* and general relief as the Court may see fit to grant.

A. T. TAYLOR,
By Counsel.

W. E. HAYMOND, *Attorney.*

At another day, to-wit, on the 24th day of February, 1902, in the Clerk's office of said Court summons in chancery issued against the defendants the National Exchange Bank of Weston, Joseph Fuccy, Allie Rudkin and B. F. Fisher, as well as to all other parties to this suit, to answer said amended and supplemental bill of complaint, which is in the words and figures following:

Summons.

Demurrer and answer of the National Exchange Bank of Weston filed at April Rules, 1902.

To the Honorable W. G. Bennett, Judge of the Circuit Court of Braxton County, West Virginia:

The demurrer and separate answer of the National Exchange Bank of Weston, W. Va. to the original and amended bills of A. T. Taylor against James V. Tully, this respondent and others filed in the said Court.

For demurrer to said bills this respondent says that the same are not, nor is either of them *suficient* in law, and for grounds of demurrer respondent says: First that bills are multifarious in this, that the Canton Bridge Company is made a defendant thereto in
respect to contracts entered into between it and the County
90 Court of Braxton County wherein neither this defendant nor James V. Tully, under *whome* it claims had or have any interest, and *ther* is no privity between the said Tully and the said Canton Bridge Company.

Second, that it does not appear by the said bills that the said County Court has in fact exceeded its authority, and it does not appear that the *recourses* from the County levies mentioned in the bill were the only resources available for the payment of the amounts contracted to be paid for the work *refered* to in the bill.

Third, it does not appear that there is any reasonable excuse for the laches of the plaintiff in resorting to his bill of injunction

to restrain the payment of the sum contracted to be paid, and yet remaining unpaid, while it does appear that there has been such long delay on the part of the plaintiff and the taxpayers of the County of Braxton, in whose behalf he professes to sue, as to bar any relief to him or *tham*.

Fourth, because it does not appear that the indebtedness complained of as contracted or incurred was beyond the money on hand and the levy of the current fiscal year of the contract.

Fifth, the said bill is otherwise *insuficient* in law.

And without waiving this demurrer, but insisting thereon, this defendant for answer to the said bills says: that it has no personal knowledge or information of the matters alleged in the bills with reference to the Canton Bridge Company, other than what is shown by the record, and hereinafter stated; and while it admits that an order was entered on the 13th day of July, 1899, with reference to the Canton Bridge Company, in effect as stated in the bill and that other orders in relation to said Company were entered by said Court at the dates mentioned in the bill, making the allowances to said Company therein stated, this defendant, upon information and belief, denies the allegation, "that it was then well known by the County Court of Braxton County and by said Canton Bridge Company, that there would be no funds from the levy of 1899 *suficient* to pay the contract price, and that in fact the said contract was made with the understanding that it would have to be paid out of levies of future years, and the same was in violation of law, and void."

91 This defendant upon information and belief, alleges that before the institution of this suit all the drafts appearing by the allegations of the bill to have been issued and made payable to the said Canton Bridge Company, were in fact paid.

This defendant upon information and belief, denies the allegation that there was not provided by the County Court, by its levy for the year 1899, a fund for the payment of the amount contracted to be paid the said Canton Bridge Company, and denies that the Court well knew that the whole thereof could not be paid out of the funds for that year, and that it was then contracting a debt contrary to law; and denies that the Court well knew there was no fund for the year 1899 at the time of the order of 29th of May, 1900, to pay the $1500.00 for Old Woman's Run bridge; and denies that the purpose of the order of that day was to conceal the illegality of the contract with said Canton Bridge Company; and upon information and belief denies that any draft was issued, as alleged in the bill, when there were no funds with which to pay the same, and when the Court had no right to issue any such drafts.

This defendant admits that the order was entered by the said County Court on the 5th day of October, 1899, with reference to bridge abutments to be built by defendant James V. Tully; but upon information and belief, alleges that in so far as it was entered providing for the building of levies of a future year it was by clerical mistake, and upon discovery thereof, and upon the assurance by the Court that they had funds and could lawfully contract with

said Tully for the erection of the abutments, made personally to him by the Court, and he, as respondent, is informed and believes, learning by inquiry that the Court had a large sum of money available for the purpose independent of the levies for 1899 and arising from the arrearage due from the late Sheriff of the County on County funds, amounting to from $8000.00 to $10000.00 and with the assurance so made by the Court, the defendant Tully agreed to go on with and complete the work of the building of the said abutments; and the said order of October 5th, 1899 and the mistake therein, hereinbefore alleged, did not arise from any want of faith on the part of the said Tully, or of the said County Court. And
92 respondent, upon information and belief, alleges that in all matters pertaining to said contract, the said Tully acted in the utmost good faith, and used all the means at his command, as he understood, to ascertain the true condition of the finances of the County, and believed that the said County Court was in like manner acting in good faith toward him, and within the scope of its powers and duties as regulated by law.

This defendant upon information and belief denies the allegation of the bill that "In fact there was no fund for the year 1899 with which to pay said contract price, nor the one half thereof, and the said County Court and the said Tully knew the fact; that there was not contemplated, as plaintiff is informed and believes, by either of said parties, that there should be such fund for the year 1899, and plaintiff says, that the said contract was illegal and void, that it is especially so, because of the contracting of the debt for the year in advance of the year in which the contract was made, as well as for the year 1899 and he says that the same was wholly void, being contrary to law."

This defendant also denies the allegation that the order of January 4th, 1900, "was made to cover the illegality of the contract, but with the understanding on the part of the defendant County Court and *defendand* Tully, and that the same should be paid out of levies for future years, and he avers that the said parties were contracting a debt to be paid by the County in future years, knowingly and intentionally, and seeking purposely to evade the appearance thereof and to conceal from the taxpayers of the County the Court and said Tully, well knew at the time of the order of the Court of January 1900, that there were no funds of 1899, with which said amount could be paid, and that they were creating a debt upon the County to be paid in future years," and denies the allegation that the same was wholly without authority of law.

This respondent upon information and belief, denies the allegations wherever appearing, that the County Court issued drafts to defendant Tully for work done under his contract, payable out of the levy of 1899, when there were no funds with which to pay
93 the same, and with knowledge of the fact, though it may appear and it may be true, that there was not *suficient* funds to pay him all of said drafts with other liabilities of the current year; but he denies that it was done in pursuance of any previous knowledge, understanding or agreement, between the County Court and

the defendant Tully at the time the work was contracted for that the funds or levies of any future year would have to be resorted to for payment for said work, or any part thereof.

Respondent also upon information and belief, denies the allegation of the bill that the levy of 1899 as made by the County Court with knowledge that it would be *insuficient* to provide for *ita* contracts of, and pay current expenses for, the year 1899, and for payment of indebtedness on account of bridge work before that time, and denies that it clearly appears, or that it was in fact, the intention of the Court, to create a debt by the said bridge contracts for future years upon the County of Braxton, and denies that the Court did unlawfully create, purposely a debt that could not be paid, either in the year 1899 or 1900.

This defendant also denies the allegation that it was the intention and understanding between the County Court and the defendant contractors, or either of them, that a debt should be provided for to run into the year subsequent to the time of the contract.

This defendant upon information and belief, denies that the work of building abutments was awarded at an extravagant price, and much more than would have been required if the same had been open to bidders, and denies that there were more square yards of stone put into said work than was actually *nescessary* for a substantial and permanent job; and upon information and belief alleges that while there may not have been any competitive bidding for the work undertaken by defendant Tully, he nevertheless undertook the same at the lowest price for which work of a similar nature had been contracted under contract let to the lowest bidder for the erection of the stone work in a bridge across the Little Kanawha River, in Braxton County, which contract was awarded after due publication, and when there had been spirited and active competition, and at a time when the costs of labor and
94 material was much below its cost at the time the contracts for building abutments were awarded to defendant Tully.

This defendant upon information and belief denies the allegation of the bill that the whole assessed value of all real and personal property for the year 1899, in the said County, was $2117479. and alleges that the whole assessed value of such property was greatly in excess of the sum named.

This defendant upon information and belief, alleges that the plaintiff, and those for *whome* he professes to sue, as taxpayers of Braxton County, have been guilty of gross laches in respect to the matters complained of in the bills, and it here pleads and relies upon such laches as a bar to any relief prayed for in the bills; that the bridges so erected were of great and imperative public necessity; that for years before the building thereof, the people of the County of Braxton were clamoring for the building of such bridges; that the orders and contracts made and entered into in relation to said bridges were matters of public and general knowledge throughout the County; that the orders were entered and contracts made in open Court; that the fact that such contracts had been awarded was made public by announcement in two weekly newspapers published in the

said County, and having a general circulation therein, and from time to time, as the work progressed, and almost weekly the progress was reported and references made to said work through the medium of said papers; that the plaintiff especially, and in fact the taxpayers generally, throughout the County, and the remotest parts thereof, were fully aware that the defendant Tully was engaged in said work, laboring with his own hands, expending his time, his means and his muscle, and obtaining credit upon the faith of his contracts, and that said contracts were not only as hereinbefore stated entered into with the utmost good faith, but were carried out and completed by the erection of said abutments in the most approved and substantial manner, in strict accordance with his contracts and in doing so, he was compelled to, and did pledge the money, or a large proportion thereof, falling due under his contracts to enable him to complete the work, and all this time the plaintiff and the said taxpayers stood by, knowing of the said contracts, and of the work that was being done thereunder, and taking to themselves the benefits *acruing* therefrom to them as citizens and *pooperty* holders as citizens of the said County, and at the date of the institution of this suit were, and still are, enjoying the same; that the abutments of "Old Woman's Frames, and Taylors Runs" bridges amounted to more than half the contract price, and the work on these abutments was done almost under the eye of the said Taylor, and with frequent expressions of his approval of the character of the work; that the said Taylor lives within about three hundred yards of Taylors Run Bridge, and that bridge is a great convenience to him, and has enhanced the value of the four hundred acres of land owned by him, which is within sight of the location of the bridge, and which he has been using ever since its completion, and has to cross in traveling to and from the County seat, and he uses the Frames Run bridge in like manner, said two bridges being on the Elk River road, and being used by a very large proportion of the people residing in the lower part of the County; and this defendant is advised and insists that taxpayers who stand by and view the work as it progresses, and until it is completed, having knowledge of the contract, and the conditions under which the work is done, with free *acess* to the public records, cannot in a Court of equity take to themselves the benefit of the work and invoke the enforcement of a constitutional *provission* limiting the power of taxation to the *predudice* of the contractor and parties from *whome* he has obtained credit.

Furthur answering this defendant says that before the institution of this suit, and before the defendant Tully was aware that any suit would be entered to prevent payment of the drafts issued to him, payable out of the County funds in the hands of the Sheriff, he for a valuable consideration, and for the purpose of enabling him to complete the work in accordance with his contract transferred to various persons and to this defendant certain of said drafts, and there are now due and payable to this defendant four drafts, numbered respectively, 280, 281, 282, 284, each dated July 16th, 1901, three for the like sum each of five hundred dollars, and one, No. 284, for the sum of two hundred and twenty dollars, all of which

were transferred to this defendant, by the said Tully in the
96 regular course of business, without any notice, information or intimation of the matters alleged against the same in the said bills; and if the same are not paid by the County of Braxton in all probability the defendant will suffer the loss thereof, as it is informed and believes that if the plaintiff succeeds in this case it will cause the insolvency of said Tully and render him unable to refund to this defendant the amounts paid him by this defendant for said drafts or orders, which amounts this defendant alleges to be the full face value thereof.

This defendant *furthur* alleges that the contract for which said orders were drawn was never entered in the year 1899, but was in fact entered into in the year 1900; and after the 16th day of July of that year, and with reference to the year 1900; that said last mentioned contract was with reference solely to the building of the abutments to the bridge at Confluence, and that the contract therefor was lawfully made, and that the plaintiff and the taxpayers of Braxton County on whose behalf he professes to sue, had knowledge and information of the said contract before the work commenced and the progress of the work, and made no complaint in any manner to bring home to said Tully or his assignees, and especially to this defendant, any objections, either on the part of the plaintiff or the said taxpayers, until long after the work bad been completed.

And having fully answered all that is advertised it is *nescessary* for it to answer unto, this defendant answering under its corporate seal, prays that the injunction heretofore awarded in this cause be dissolved as to it, and that the bills of the plaintiff be as to this defendant dismissed, and that it may recover against the plaintiff its costs in defense of said bills most unjustly expended.

THE NATIONAL EXCHANGE BANK OF WESTON, W. VA.,
By JACOB KOBLEGARD, *Its President.*

[CORPORATE SEAL.]

LINN, BYRNE & HINES,
ROBERT L. BLAND,
Attorneys for the National Exchange Bank of Weston, W. Va.

97 STATE OF WEST VIRGINIA, *County of Lewis, To wit:*

Jacob Koblegard, being duly sworn, that he is the President of the defendant, The National Exchange Bank of Weston, W. Va., named in the foregoing Answer, and that he knows the contents thereof; that the facts and allegations contained therein are true, except such as, *as* are therein stated to be upon information and belief, and as to such allegations he believes them to be true.

JACOB KOBLEGARD,
President of the National Exchange Bank of Weston, W. Va.,

Taken, sworn to, and subscribed before me this 8 day of April 1902.

[NOTARY'S SEAL.] J. B. MITCHELL,
Notary Public for Lewis County, W. Va.

Separate Answer of Frank H. Kidd.

The separate answer of Frank H. Kidd to the bill of complaint and amended bill of complaint of A. T. Taylor against James V. Tully, respondent and others, filed in the Circuit Court of Braxton County.

To the Honerable W. G. Bennett, Judge of said Coutrt:

Respondent for answer to said bill or so much thereof as he is advised it is material for him to answer, says: that he has no personal knowledge or information of the matters alleged in the bill with reference to the contract between the defendant County Court and The Canton Bridge Co., or between said Court and the defendant J. V. Tully other than what is shown by the record.

Respondent *furthur* says that it is true as *allegeed,* that an order was entered by the said County Court on the 5th day of October, 1899, contracting with said J. V. Tully for the building of certain bridge abutments, but upon information which he believes to be true says that in so far as said order provided for the binding of levies of a future year it was so entered by mistake, and on dis-
98 covery thereof, and assurances made by said County Court to said Tully that they had sufficient funds arising from the levy of 1899 and from other sources, available, to pay for the work so contracted, the said Court by order entered on the 14th day of January, 1900, corrected said mistake, and entered the order contracting with said Tully as it was *intende* to have been entered in October, 1899, agreeing to pay for the work so contracted out of the levy of 1899, and the mistake hereinbefore alleged did not arise from any bad faith or fraudulent purpose either upon the part of said Tully or said County Court, and respondent, upon information and belief alleges in all matters pertaining to said contract the said Tully acted in the utmost good faith, and used all means at his command to ascertain the true condition of the County finances.

Respondent, upon information and belief denies the allegation in plaintiff's bill that the order of January 4th 1900, was made to cover up any illegality in the contract between said Tully and the County Court denies that there was any illegality in said contract, or that there was any understanding on the part of said County Court and Tully that said contract would be paid out of the levy of future years, or that the defendant Tully and the County Court were contracting a debt to be paid by the County in future years, knowingly and intentionally and seeking purposely to evade the appearance thereof and to conceal from the taxpayers the true nature of said contract.

Respondent upon information denies that there were no funds from the levy of 1899 with which to pay the amount so agreed to be paid to the defendant Tully, but on like information and belief he avers that there was a large sum of money derived from the levy of 1899, available for this very purpose and in addition thereto there was a large sum of money towit: about $8000. then due and owing

to the County from the former Sheriff of the County available for this purpose; and upon like information he *furthur* avers that there was no other outstanding legal liability on the said County Court which could have been properly paid with said fund and that the whole of said funds should yet be in the treasury of the
99 said County, except what has been paid on the said contract with said Tully.

That on the 27th day of April, 1900, there was an order entered by said County Court receiving the abutments of what is known as the Old Woman's Run Bridge built by said Tully under his said contract, and drafts were issued therefor among which were three for $500. each payable to or for the use of this respondent, payable out of the levy of 1899, and that the said drafts or County orders are now owned by this respondent and the same are unpaid; that the same have been regularly assessed to him for taxation in said County and he has been required by the Assessor and the Sheriff of said County to pay taxes on the same; that the Sheriff of said County has required him to pay taxes assessed against the said County orders and all of the other property owned by him for the year 1901, including the levy laid for bridge purposes for that year.

Respondent further says that the drafts aforesaid were assigned by said Tully to him before the institution of this suit and before defendant Tully or respondent was aware that any suit would be instituted to prevent the payment of the same, and that he paid the said Tully the face value of the said draft, without any notice, information or intimation of the matters alleged in plaintiff's bill and without any knowledge whatever of any irregularity in the contract and proceedings between the County Court and said Tully and if the same are not paid by the County aforesaid, in all probability respondent will suffer the loss thereof, as he is informed and believes that if the plaintiff succeeds in this case it will render the said Tully unable to refund or to repay him the amount of said drafts.

Defendant *unpon* information and belief denies that the work of building abutments was awarded to the said Tully at an extravagant price or that there was more work done than was actually necessary. And also in like manner denies that the whole assessed value of real and personal property for the year 1899 in said County was $2117479. but says the same was much in excess of that.

This respondent upon information and belief alleges that plaintiff for those for *whome* he pretends to sue have been guilty of
100 gross *latches* in regard to the matters named in his bill and he here sets up such laches as a bar to any relief asked for in said bill; that the bridge so erected and especially the one over Old Woman's Run, were of great public necessity that the orders and contracts made and entered into in relation to said bridges were of public and general knowledge throughout the County, the orders and contracts were made in open Court and announced in two weekly newspapers published in said County, and having a general circulation therein and almost weekly the progress was reported and reference made to said work through said papers; that the plaintiff especially and the taxpayers generally throughout the County were

fully aware that the said Tully was engaged in said work; and all this time the plaintiff and the taxpayers stood by knowing of the said contract and of the work that was being done thereunder and credit being obtained by said Tully on the faith of said contract and work and receiving to themselves the benefits *accrueing* therefrom as property holders of said County and enjoying the use and benefits of said bridges and abutments a large portion of said work being done under the eye of plaintiff, without the least hint from him or any other taxpayer that they disapproved of said contract, and respondent is advised and insists that taxpayers who stand by and review the work as it progresses having full knowledge of the contract and conditions, under which the same is being done until the same is completed, cannot in a Court of Equity, receive the benefit of said work and refuse to pay for the same.

Having fully answered respondent asks that the injunction heretofore awarded in this cause be dissolved and plaintiff's bills dismissed as to him, with his reasonable costs.

FRANK H. KIDD,
By Counsel.

HINES & KELLY, *Att'ys.*

STATE OF WEST VIRGINIA, *County of Braxton, To-wit:*

Frank H. Kidd, being duly sworn, says that he is the defendant named in the foregoing answer and that the facts and allegations therein contained are true, except such as are therein stated
101 to be upon informtaion and belief, and as to such allegations, he believes them to be true.

FRANK H. KIDD.

Subscribed and sworn to before me this 28th day of April, 1902.

J. E. BAUGHMAN, *Notary.*

Depositions of witnesses taken before the undersigned Notary *Publiv* for Braxton County, West Virginia, at the Law office of W. E. Haymond, in the town of Sutton and said County on the 25th day of March, 1902, to be read as evidence in behalf of plaintiff in the Chancery Cause of A. T. Taylor and all other taxpayers of Braxton County, plaintiff, against J. V. Tully, The Canton Bridge Company, and others, defendants, now pending in the Circuit Court of Braxton County, West Virginia.

Present, W. E. Haymon, attorney for plaintiff.

No witness appearing the *furthur* taking of these depositions is adjourned and continued until tomorrow at the same place and between the same hours.

Given under my hand this 25th day of March, 1902.

C. H. BLAND, *Notary.*

MARCH 26, 1902.

The *furthur* taking of these depositions is resumed pursuant to adjournment of yesterday. Present same as above.

No witness appearing the *furthur* taking of these depositions is adjourned and continued until tomorrow at the same place and between the same hours.

Given under my hand this 26th day of March, 1902.

C. H. BLAND, *Notary.*

MARCH 27TH, 1902.

The *furthur* taking of these depositions is resumed pursuant to adjournment of yesterday. Present, W. E. Haymond, Counsel for plaintiff, and A. T. Taylor in person, and R. G. Linn and C. C. Hines and Fred L. Fox Counsel for J. V. Tully and defendant J. V. Tully in person.

102 I. H. GREATHOUSE, a witness of lawful age, introduced in behalf of plaintiff, after being duly sworn, deposes and says as follows:

By W. E. HAYMOND, Esq.:

. 1. Were you a member of the County Court of Braxton County in the years 1899 and 1900?

A. Yes, sir; I was those two years.

Q. 2. You will please state whether you are the Ira H. Greathouse mentioned in the orders of the County Court of Braxton County in relation to Bridge contract with the Canton Bridge Company and J. V. Tully, copies of which are filed with this question?

A. Yes, sir; I am the Ira Greathouse.

Q. 3. State whether you were present and acting with the other members of the Court at the time of making the contracts between the said Court and the Canton Bridge Company and between said Court and J. V. Tully as represented by the said orders?

A. Yes, sir.

Q. 4. State what, if any, understanding between the said parties contracting and the said Court at the time of making the several contracts was as to the time payment for the said contract prices to the contractors, respectively was to be made?

Obj. Defendant Tully, by counsel, objects to this question or to any answer that may be given thereto because the contract is the best evidence as to what was the understanding.

A. If I recollet right when their agent, Meridith, was here at our levy term, that the levy for that year had been laid; that the Court, after talking with Meridith about bridges agreed with Meridith, I think there were five bridges, and that it was agreed and understood that the present levy wasn't *suficient,* that we would contract for the five bridges, and pay what we could out of the present levy, and that they would take the *ballance* out of the future levy. I think that's about all the answer I have to make to it.

Q. 5. What, if any, was the understanding and *arrangment* about the time of payment to J. V. Tully?

103 Obj. The defendant J. V. Tully objects to this question and to any answer that may be given thereto for the reason stated in the last objection.

A. When we contracted with J. V. Tully to build the abutments the Court agreed with J. V. Tully to build the abutments, and that they would allow him claims for part of his work out of the present levy and that the work would not be completed during that year and at a future term of the Court they could make a levy *suficient* to pay for said work.

Q. 6. You used the term present levy, do you mean by that the levy of 1899?

A. Yes, sir.

Q. 7. It appears that by an order of the Court made on the 5th of October, 1899, the Court awarded to J. V. Tully the contract of building abutments to four bridges, one at Old Womans Run, one near the mouth of Oil Creek, one at Frames Run and one at Taylors Run, and provided that one half of the work was to be paid for out of the County fund of 1899, and one half out of the fund of 1900, and by an order entered by said Court on the 4th of January, 1900, it appears the Court awarded the same contract except that it provided that the work was to be paid for out of the fund of 1899; will you explain how these two orders came to be entered?

A. After awarding to J. V. Tully the contract for building the abutments, the question was raised as to whether it was in the power of the Court to award contracts that would take more money than the present levy would pay and at the next term of the Court we made this second order in order to protect J. V. Tully on our first contract, and it was understood with J. V. Tully that we issue drafts and that he could use the drafts, and at the levy of 1900 we could raise the levy *suficient* to pay them.

NOTE.—The last part of the answer wherein the witness states what was understood is objected to by defendant Tully.

104 Q. 8. At whose instance was this order of 4th of January, 1900, made?

A. I don't *reccollect* whether it was by J. V. Tully himself or by counsel. The order was handed to the Court by some one.

Q. 9. State whether or not there was at the time of making the levy of 1899, which the Court designated as for bridge fund, an indebtedness for bridge work before that time done by parties other than Tully and the Canton Bridge Company?

A. There was indebtedness for bridge work before this contract was awarded, but on settlement there had been future levies laid that would have paid the principal part that was due from the Sheriff that was uncollected.

Q. 10. It appears by an order of the County Court made April 27th, 1900, that J. V. Tully was allowed drafts on account of bridge work to the amount of $3797.15, and on the 6th day of July in the

same year he was allowed drafts to the amount of $2689.52, besides allowances that had been made to him in the year 1899; please state what, if any, was the understanding between the Court and said Tully at the time of *issueing* said drafts as to when they were to be paid?

Obj. To this question and to any answer thereto, the defendant Tully objects, because the orders of the Court *refered* to constitute the best evidence of understanding.

A. It was understood that at the time the drafts were issued that the drafts were to pay Tully for work contracted with the Court in 1899 and that, I understood from the levy of 1900 had been increased, I think from 12½ cents to 16 2/3, and that increase would enable the Court to pay a part of said claims. Under said contract with J. V. Tully said contract hadn't been completed and it was understood with the Court that the present levy wouldn't pay all the work and at the next levy term they could make *suficient* levies to pay for said work; that's all I have to say about it.

Q. 11. Was there any other writing evidencing the contract with the Canton Bridge Company or J. V. Tully than the orders of the Court, copies of which I have shown you?

105 A. None that I recollect of.

Q. 12. Was there or not any public notice of the letting of the contracts for bridge work hereinbefore *refered* to, or any *competative* bids therefor?

A. The Court appointed two men to get up plans and specifications for building the abutments, and I am not able to say after they made their report whether public notice was given or not.

Cross-examination.

By R. G. LINN, Esq.:

Q. 1. The Court in awarding the contracts referred to acted in good faith, did it not? and without any intention to let the work at a higher price than would in its judgment be deemed fair and reasonable?

A. The Court acted in good faith, and in their judgment they taken the contracts to be all right, and not for the purpose of beating the Canton Bridge Company out of any of their work.

Q. 2. Were not the prices at which the work was awarded to the Canton Bridge Company and to the defendant Tully deemed by the Court fair and reasonable?

A. Yes, sir.

Q. 3. Were you a member of the Court at the time the contracts for building the bridge across the Little Kanawha River at Burnsville, in this County, was let?

Obj. Plaintiff, by counsel, objects to this question.

A. I was not.

Q. 4. Do you know about the time that contract was let?

A. I *reccollect somthing* near about the time.

Q. 5. Do you know whether or not any public notice of the

letting of that contract was given and whether or not there was competitive bidding at the letting of the contract?

A. I don't know that there was any public notice and don't know how the bids were received.

106 Q. 6. At the time, or about the time the contract for the building of the abutments to the bridges across Old Womans Run, Taylors Run, Frames Run and Oil Creek was awarded was there not in considering the means which the Court had at command the sum of about $8000.00 taken into consideration as due from the ex-sheriff and the then present sheriff?

A. There was considerable money due, as to the amount I am not able to say.

Q. 7. For the purpose of refreshing your recollection I will ask you if the Court did not cause an investigation and report to be made by L. H. Kelly, Prosecuting Attorney, and if he did not report the amount due from the ex-sheriff and sheriff available for the purpose to be about $8000.00?

A. The Court authorized L. H. Kelly, Prosecuting Attorney, to investigate and make report to Court, and to the best of my *reccollection* it was *somthing* near $8000.00.

Q. 8. Did you act in the award of the contracts to defendant Tully for building the abutments to the bridge at Confluence, and, if so, when was the contract awarded, and at what price?

A. I acted in awarding the contract to J. V. Tully for building abutments at Confluence. I can't say as to the contract price, but my *reccollection* is that the abutments at Confluence were built for a less price than the abutments across Old Womans Run and at the mouth of Oil Creek.

Q. 9. Are you not mistaken as to the price and was not Mr. Tully to have the same compensation that was provided for in the other contract, that is, the same price per cubic yard?

A. I couldn't say positive, I don't recollect. Because the fact that Lewis County was expected to pay part of it I was of the impression that Mr. Tully agreed to do the work for a less price.

Q. 10. Was there public notice given by you of the letting of the *last* mentioned contract?

A. My *reccollection* is that there was a public notice.

Q. 11. State whether or not in your opinion the several bridges referred to were needed?

107 Obj. Plaintiff, by counsel, objects to this question.

A. In my opinion they were.

Q. 12. State whether or not there had been frequent and general applications and recommendations to the Court to build these bridges?

A. There had been a number of applications and also petitions for said bridges.

Q. 13. Where is Old Woman's Run with reference to the town of Sutton?

A. It is what I would call the upper end of town, near Elk River.

Q. 14. How long have you known the plaintiff, Alex. T. Taylor?

A. I have known Taylor for several years.

Q. 15. Is he not a frequent visitor to the town of Sutton?

A. I see him here quite often when I am in town.

Q. 16. Did you or not see him quite often in the town of Sutton in the years 1899 and 1900?

A. I saw Mr. Taylor different times, but have no *reccollection* of any definite time that he was here.

Q. 17. State if you know where he lived in those years, and still lives?

A. I understood at the time and does yet live at what is generally known as the old Taylor farm, below Sutton, on Elk River.

Q. 18. State if you know whether or not he owns any land near Sutton, and if so, the quantity, and whether or not to get from Sutton to the said land you would have to cross Taylors Run and Frames Run?

A. As to the quantity, I don't know, but in going from Sutton he would cross those two branches. It is my understanding that he owns land down there.

Q. 19. State whether or not in your opinion the bridges across Frames Run and Taylors Run would be a convenience to him, and whether or not they have enhanced the value of his land?

108 Obj. Plaintiff, by counsel, objects to this question.

A. They would be a great convenience to Mr. Taylor in going to *anf* from Sutton to his farm, and in my opinion it would enhance the valuation to *some extebt*.

Q. *19*. State whether or not all the work contracted to be done by the defendant Tully in relation to building of abutments to the several bridges aforesaid had been completed at the time of the institution of this suit, or prior to the 18th of October last?

A. I think it had.

Q. *20*. State as near as you can when the defendant Tully commenced work under the said contract, and where?

A. Said Tully commenced work soon after contracting said work, and first work was done on the two abutments below Sutton known as Taylors Run and Frames Run.

Q. *21*. How near was that work to residence of the plaintiff Taylor?

A. It was a short distance. I don't think it would be over 200 or 300 yards in my recollection from Taylors Run.

Q. 23. Where was the next work done under said contract?

A. Next work was known as the Old Woman's Run.

Q. *23*. Where was the next work?

A. Next work was at the mouth of Oil Creek, near Burnsville.

Q. *24*. State whether or not the beginning and progress of this work was a matter of public and general knowledge and notoriety in this County?

A. It was for this reason, that the proceedings of the Court were published in the County papers.

Q. *25*. State whether or not as near as you remember the defend-

ant Tully was present when L. H. Kelly made report to the Court of the amount due from the ex-sheriff and Sheriff as heretofore *refered* to by you?

A. I don't recollect; he may have been.

Q. *26.* Do you remember whether or not he was present
109 when that amount was *refered* to by the Court as a part of its available funds?

A. I think that Tully was present at that term of Court, and asked to know the amount that was due on that particular fund, that he had some drafts that had been issued by the Court, and that the Sheriff claimed that there was no money due on that fund. He was told by the Court that we had the Prosecuting Attorney investigate and report to the Court, and that Kelly, Prosecuting *Attorney*, did report *somthing* near $8000.00 due from Ex-Sheriff and present Sheriff.

Redirect.

By Mr. Haymond:

Q. 1. There was not estimated to be $8000.00 nor anything near such sum of the indebtedness of the Ex-Sheriff applicable to bridge purposes at the time these contracts were made, was there?

Obj. To this question and any answer to be given thereto, the defendant Tully objects.

A. My *reccollection*, is that there was *somthing* near that amount on bridge fund.

Q. 2. There was no order made by the County Court in relation to the bridge at Confluence other than the one 13th of July, 1900, appointing you a commissioner to let the contract of the building of the abutments, was there?

A. None that I recollect of.

Q. 3. Had there been bridges at the mouth of Old Womans Run, at the mouth of Oil Creek and at Confluence, prior to the contracts aforesaid?

A. Not to my knowing.

Q. 4. The bridges at Frame's Run and at Taylor's Run were all of the bridges included in those contracts at places where there had been bridges before, were they?

A. That was all.

110 Q. 5. If I understand you correctly at the time the Court contracted with the Canton Bridge Company by its agent, Meridith, it was understood by Meridith and by the Court that a part of the contract price was to be paid from the levy of future years?

Obj. To this question defendant Tully objects.

A. I think it was *thoughly* understood by the Court and their agent, Meridith, that a part of this contract would be paid out of a future levy, that the work wouldn't be completed until the Court would have a meeting in which they could increase their levy *sufficient* to pay said claims.

Q. 6. Was it understood that the Court would meet and increase

the levy in the year that the contract was made, or in a year thereafter?

A. In a year thereafter, at the levy term.

Q. 7. And is it true that at the time of the contract with J. V. Tully it was understood and agreed between the County Court and said Tully that a part of the contract price to be paid him should be paid out of the levies of succeeding years?

Obj. To this question defendant Tully objects.

A. It was agreed and understood between the Court and J. V. Tully that a part of said contract be paid out of the present levy, and that said contract would not be completed until in the next year, and that a part would be paid out of that year levy, 1900.

Recross.

By Mr. LINN:

Q. 1. The contract to defendant Tuily for the building of the abutments to the bridge at Confluence, you acted under an order of the Court, did you not?

A. I did.

Q. 2. If the record fails to show your report or the fact that you reported that you had awarded that contract to defendant Tully, was such failure by reason of any design on your part or that of the Court to conceal the fact, or is it attributable to mere oversight, or clerical omission?

111 A. If the record fail to show report of the contract between myself and J. V. Tully it is a mere mistake, and with no intent to conceal nor defraud the people or James V. Tully in any way.

And *furthur* this deponent saith not.

IRA H. GREATHOUSE.

No other witness appearing, the *furthur* taking of these depositions is adjourned and continued until tomorrow, at the same place and between the same hours.

C. K. BLAND, *Notary*.

MARCH 28, 1902.

The *furthur* taking of these depositions is resumed pursuant to adjournment of yesterday. Present as last above.

No witness appearing, the *furthur* taking of these depositions is adjourned and continued until tomorrow at the same place and between the same hours.

Given under my hand this 28th day of March, 1902.

C. H. BLAND, *Notary*.

MARCH 29, 1902.

Met pursuant to adjournment of yesterday. Present same parties. No witness appearing, the *furthur* taking of these depositions is

adjourned and continued till Monday next at the same place and between the same hours.

Given under my hand this the 29th day of March, 1902.

C. H. BLAND, *Notary.*

MARCH 31, 1902.

Met pursuant to adjournment *os* Saturday last. No witness appearing, the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given *inder* my hand this the 31st day of March, 1902.

C. H. BLAND, *Notary.*

APRIL 1ST, 1902.

Met pursuant to adjournment of yesterday. No witness appearing, the *furthur* taking of these depositions is adjourned
112 till tomorrow, at the same place, and between the same hours.

Given under my hand this the 1st day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 2D, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 2d day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 3D, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *further* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 3d day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 4TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 4th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 5TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till Monday next at the same place and between the same hours.

Given under my hand this 5th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 7TH, 1902.

Met pursuant to adjournment of Saturday the 6th inst. No wit-

ness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this the 7th day of April, 1902.

C. H. BLAND, *Notary.*

113 APRIL 8TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 8th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 9TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 9th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 10TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this 10th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 11TH, 1902.

Met pursuant to adjournment of yesterday. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this the 11th day of April, 1902.

C. H. BLAND, *Notary.*

APRIL 12TH, 1902.

Met pursuant to adjournment of yesterday. Present, B. P. & V. B. Hall, Attorneys for plaintiff and plaintiff A. T. Taylor in person, and Dulin & Fox, Counsel for Tully.

J. T. FRAME, a witness of lawful age, introduced in behalf of the plaintiff, after being first duly sworn, deposes and says as follows:

By B. P. HALL, Esq.:

Q. 1. State your age and residence?

A. Age, 55; residence, Sutton, W. Va.

114 Q. 2. How far do you live from the bridge across the mouth of Old Womans Run, the abutments of which were constructed by J. V. Tully?

A. About ten steps, or *somthing* like it.

Q. 3. State whether or not you furnished to said Tully the timber which was placed as a foundation to said abutment?

A. Well, I think I furnished it all.

Q. 4. What kind of timber was it?

A. Beech timber.

Q. 5. How was it prepared for the purpose for which it was used?

A. It was *hued* on two sides by him.

Q. 6. State if you remember what said Tully paid you for said timber?

A. It might have been five or six dollars would be as close as I could come at it.

Q. 7. How was *thw* timber placed or arranged?

A. Well, it was put in there length ways of the cut, one layer, and the next layer was placed across the first. I think there was just two layers.

James V. Tully, by counsel, excepts to each question and answer propounded to this witness, because there is nothing in the pleadings of this case to make it *relavant;* it is therefore not responsive to the issue in this case, and therefore improper.

Cross-examination.

By Mr. DULIN:

Q. 1. Was the sale made by you of this timber on the stump in the woods?

A. Yes, sir.

Q. 2. You may *atate* whether Mr. Tully took the timber from the stump and prepared it and placed it in the foundation?

Q. 3. State whether or not the bridge across Old Womans Run is not a matter of great convenience and benefit to the
115 people not only living in the town of Sutton, but the upper end of this *Countty?*

A. It certainly is.

Q. 4. You may state whether or not before this bridge was constructed during a large portion of the year and during freshets in Elk River the people living in the upper end of the County and desiring to come to the town of Sutton were not prevented or greatly inconvenienced by the high waters?

Obj. Plaintiff, by counsel, objects to this question and the *proceeding* question and answers thereto, because immaterial.

A. They were certainly greatly inconvenienced, and at times they couldn't cross there at all.

Q. 5. State whether or not there is much travel across that bridge from the upper end of this County by the citizens of this County and others?

Objected to because immaterial.

A. Yes, sir, there is quite a good deal of travel.

Q. 6. You may state whether or not there is any other direct public road to the upper end of this County and to Webster County on the north side of Elk River except by way of this bridge?

A. Well, it would be the most direct I expect. You could go round by Flatwoods.

Redirect.

By Mr. HALL:

Q. 1. Was there ever a bridge at that point before?

A. Not to my knowledge.

Q. 2. How long have you lived in Sutton, near where this bridge is?

A. About 15 or 16 years, or along there. I have lived in Sutton about 30 years.

Q. 3. State whether or not this bridge is in the town of Sutton?

A. Yes, it is in the *corperation.*

And *furthur* this deponent saith not.

J. T. FRAME.

116 AMOS BRIGHT, a witness of lawful age, introduced in behalf of plaintiff, after being first duly sworn, deposes and says as follows:

By Mr. HALL:

Q. 1. State your age, residence and occupation?

A. Age, 48 years, residence, Sutton, West Va., and occupation, I have been giving most of my attention to the lumber business for the last 8 or 10 years.

Q. 2. In what kinds of lumber have you been dealing?

A. Most all kinds, domestic and export.

Q. 3. What would be a fair value per thousand feet for beech timber in the year 1899?

A. That would depend upon where, and in what state of manufacture it would be wanted.

Q. 4. What would have been the commercial value of beech timber in this County in the tree in the year 1899?

A. Beech timber in this County, so far as I know, at that time had no special commercial value. I have been in the lumber business about ten years, and have never had an order, until very recently at least for beech timber.

Q. 5. What was the commercial value, or what would be a fair value for beech, sugar and small oak timber flattened on two sides and delivered on the banks of Elk River in 1899?

A. Oak timber made into cross-ties and delivered at the depot here was worth at that time 30 cents a tie containing about 45 feet, which would be less than $8.00 a thousand.

Q. —. State whether sugar and beech would be worth more or less than the oak?

A. Those timbers are worth less than oak in this country.

Q. 7. State whether it would be worth more or less to deliver such timber as mentioned on the banks of Elk River at the mouth of Frames Run and Taylors Run and Old Womans Run, than to deliver it at the depot?

A. That would depend upon where it was gotten from.

117 Q. 8. Suppose it was gotten in the woods, near the places to where it was delivered?

A. Well, it would not cost any more to deliver it at those points than to deliver it at the depot.

Obj. James V. Tully, by counsel, excepts to each question and answer propounded this witness because they are not responsive to any issue raised by the pleadings in this case, and are therefore *irrelavent* and improper.

Cross-examination.

By Mr. DULIN:

Q. 1. Do you know what the timber spoken of by you was used for in the construction of the *abuuments* to the bridges spoken of?

A. I do not.

Q. 2. Are you acquainted with the territory and population of Holly district and the public roads leading from the town of Sutton into that district?

A. Yes, sir; fairly well.

Q. 3. About what *propotion* of Holly District in this County lies on the north side of Elk River?

A. Well, I should say about two thirds.

Q. 4. You may state whether or not that portion lying on the north side of Elk River is more densely populated than the portion on the south side?

A. Yes, sir; it is.

Q. 5. By what public road do the citizens of Holly district and other persons traveling through that district, on the north side of Elk River either on foot, horse back or by wagon, travel to the town of Sutton and the lower end of the County?

A. Well, most of them would come what we call the ridge road, striking the river about a mile above town.

Q. 6. After striking Elk river a mile above Sutton how would they reach Sutton?

A. By coming down the river, crossing the bridge at the mouth of Old Womans Run.

118 Q. 7. Give an *aproximate* estimate of the population of this County that would travel that road, reaching the county seat of this County; also stating whether the people from Webster County would use the same road?

A. I could not give an *inteligent* estimate of the number of people that would travel that road in coming to the county seat of this County. There would be a part of Webster County people travel that road in coming to Sutton.

Q. 8. When did you first have knowledge that this suit would be instituted?

A. I think it had been instituted, and considerable work done in it before I knew anything of it.

Q. 9. Do you know why this suit was instituted, and what prompted the institution of this suit?

A. No, sir; I do not.

Q. 10. You may state whether or not the bridge at Taylors Run and Frames Run below the town of Sutton and the bridge across

Old Womans Run in said town are *nescessary* conveniences to the people of this County and to the traveling public desiring to pass through the sections of County to which said roads lead?

Obj. Plaintiff, by counsel, objects to this question and all the questions asked this witness as to the necessity or conveninence of said bridges and the answers thereto because immaterial.

A. The bridges at the mouth of Frames Run and Taylors Run I think are necessities, but the one across the mouth of Old Womans Run I never thought was a necessity, although it is a convenience to some people.

Q. 11. Did you know of the construction of these bridges at the time Mr. Tully was building the same?

Q. 12. State whether or not you saw Mr. A. T. Taylor, the plaintiff, in the town of Sutton while the bridge across Old Womans Run was being constructed?

A. I do not remember that I did, but it is probable that I did, as he often comes to town.

119 Q. 13. You have stated that you are and have been engaged in the lumber business for several years; what other business are you engaged or connected with in this County?

A. I have been connected with the mercantile business for a good many years.

Redirect.

By Mr. HALL:

Q. 1. Were you acquainted with the market prices of timber of *different* kinds in 1899?

A. Well, most kinds of timber that grows in this country, I think I was.

Q. 2. State whether or not the travel across the bridge at the mouth of Old Womans Run or on the road on which it is located has fallen off in recent years on account of the railroad having been built?

A. Well, I couldn't say for certain, but my opinion is that it has.

Recross.

By Mr. DULIN:

Q. 1. That road is still used by the people who travel on foot, horse back or by wagon and also for the purpose of, in a large manner, *suplying* the people of the town of Sutton with coal, is it not?

A. Yes, sir.

And *furthur* this deponent saith not.

AMOS BRIGHT.

J. M. FRAME, a witness of lawful age introduced in behalf of the plaintiff, after being first duly sworn, deposes and says as follows:

By Mr. HALL:

Q. 1. State your age and residence?

A. Age 28; residence, Otter District Braxton County, W. Va.

120 Q. 2. How far do you reside from the Taylor's Run and Frame's Run bridges the abutments of which were constructed by J. V. Tully?

A. Well, I suppose half a mile from Taylors Run bridge, and it is about a quarter from the other.

Q. 3. State if you know who furnished the timber to J. V. Tully for the *the* foundation of the said abutments?

A. J. M. Frame and Franklin Frame. By J. M. Frame I mean myself.

Q. 4. What kind of timber did you furnish?

A. Beech and maple and red oak.

Q. 5. Did you and Frank Frame furnish the timber for both bridges?

A. Yes, sir; that's the abutment timber.

Q. 6. How much did Mr. Tully pay you for all the timber furnished by you?

A. Fifty dollars.

Q. 7. How was said timber prepared for the use to which it was put?

A. Well, it was flattened on two sides a foot thick and not less than 6 or 7 inches, I forget now which, at the narrow end and as wide as it would face.

Q. 8. Who prepared the timber in this way, and who delivered it at the bridge?

A. Franklin Frame and myself.

Q. 9. Was $50. the price paid for the timber, the work done on it, and delivering it, that is, did $50. cover all of it?

A. $50 covered it all.

Q. 10. Were you acquainted with the market price of such timber as you sold and delivered to Tully at that time?

A. Only I was out to Charleston, and I understood there that it was selling for $6.00 per thousand.

James V. Tully by counsel, excepts to the foregoing questions and answers propounded witness J. M. Frame because they are not responsive to any issue raised by the pleadings of this case, and are therefore irrelevant and improper.

121 Cross-examination.

By Mr. DULIN:

Q. 1. What was this timber spoken of by you used for?

A. It was used for putting under the four abutments to the two bridges to the Taylors Run and the Frames Run.

Q. 2. Do you mean that the timbers were used as a foundation on which to build the abutments?

A. A foundation on which to build the abutments, yes, sir.

Q. 3. Please describe if you can how the foundation was put in, and what the timber rested on?

A. Well, the foundation was about 7½ feet one way and 19 feet the other, that is, that was the length of the timbers. The short timbers were placed lengthwise with the road on some broke up stone under and the large timbers were turned crossways of the road right on top of the others, made it two thicknesses.

Q. 4. Was it necessary to have these timbers or piling in the foundation on which to lay the stone?

A. I suppose it was necessary to have some kind of timbers.

And *furthur* this deponent saith not.

JOHN M. FRAME.

1 d. 3 m.

No other witness appearing the *furthur* taking of these depositions is adjourned and continued until Monday next at the same place and between the same hours.

Given under my hand this the 12th day of April, 1902.

C. H. BLAND, *Notary.*

MONDAY, *April 14th,* 1902.

Met pursuant to adjournment of Saturday last. Present, B. P. & V. B. Hall, of counsel for plaintiff. No witness appearing, the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this April 14th, 1903.

C. H. BLAND, *Notary.*

APRIL 15, 1902.

122 Met pursuant to adjournment of yesterday. Present as last above. No witness appearing the *furthur* taking of these depositions is adjourned till tomorrow at the same place and between the same hours.

Given under my hand this April 15, 1902.

C. H. BLAND, *Notary.*

APRIL 16TH, 1902.

Met pursuant to adjournment of yesterday. Present as last above. No witness appearing, the *furthur* taking of these depositions is adjourned *til* tomorrow at the same place and between the same hours.

Given under my hand April 16th, 1902.

C. H. BLAND, *Notary.*

APRIL 17TH, 1902.

Met pursuant to adjournment of yesterday. Present same parties and Fred L. Fox, of counsel for defendant James V. Tully.

IRA H. GREATHOUSE, a witness of lawful age introduced in behalf of plaintiff after being first duly sworn, deposes and says as follows:

By Mr. HALL:

Q. 1. In your deposition heretofore taken in this case you say, that at the time of *enterin* into the contracts with the Canton Bridge Company and J. V. Tully, in substance, that there was a *ballance* due on the bridge fund from Berry, late Sheriff; that there was indebtedness for bridges theretofore built, but that you thought the prior levies would almost pay off the said indebtedness; do you mean that the levies alone were sufficient to pay off the old indebtedness, or that it would take the *ballance* from Berry and the prior levies together to almost pay it?

A. I mean that the prior levies and the money due from Berry would be practically enough to pay off the old indebtedness.

Cross-examined.

By Mr. FOX:

Q. 1. What was *the* due the County on bridge fund from late Sheriff Berry and John Adams then Sheriff, at the time the Tully contract was entered into?

123 A. Well, we thought there was about six thousand dollars due from Berry and I don't recollect whether the present levy in making up my conclusions was taken into consideration or whether or not there was money due from Adams from levies prior to that time to make up the amount *somthing* like Eight Thousand dollars.

Q. 2. What was the amount of the prior indebtedness you speak of?

A. The amount of the indebtedness of the old bridge levies to the best of my *reccollection* was something like eight thousand dollars.

Q. 3. Of what did it consist?

A. It was for the Burnsville bridge and the bridge here.

Q. 4. Will you please state to what companies the County owed the sum of Eight thousand dollars on bridge fund on the old bridge contracts at the time the Tully contract was entered into?

A. The best reference that I can give would be to go back to the records at the time the contracts was made and see who the contracts was awarded to, and you could find it better than I could give it as this was done before I was a member of the Court.

Q. 5. Isn't it a fact that the only outstanding indebtedness on account of bridge fund was an amount due the American Bridge Company, and that was less than three thousand dollars?

A. I don't recollect to *whome* the contracts were for the old indebtedness made, but my *reccollection* is that we had the Prosecuting Attorney to look up the records to find the amount of the money that was due that had been levied for to pay the indebtedness and

that he reported that the indebtedness was *somthing* like eight thousand dollars.

Q. 6. In your former deposition you said that L. H. Kelly reported to the Court that there was about Eight Thousand dollars available for the purpose of doing the bridge work contracted to Tully, did you not?

A. I did not.

Q. 7. Will you look at question 7 of your former deposition and your answer thereto, and say whether or not you did not say that the amount available for the work then contracted was about
124 Eight Thousand dollars as reported by Mr. Kelly? and also state whether or not you said anything about any indebtedness reported by him?

A. I don't recollect that I said anything about the amount of the indebtedness as reported by L. H. Kelly, but the purpose of having L. H. Kelly to make the report was to ascertain whether or not we had *suficient* amount of money due if collected to pay the amount of the old indebtedness. It was available for the purpose of paying the old indebtedness is what I want to say.

Q. 8. Do you mean to say that that is what you said?

Obj. Plaintiff by counsel objects to this question because his former deposition speaks for itself and while the question and answer *refered* to taken alone might *possible* bear the construction placed upon it by counsel for defendants taken together with the whole deposition it plainly will not bear that construction.

A. Practically so, yes, sir.

Q. 9. You don't know yourself what the real indebtedness of the County on account of the bridge fund was at the time of the Tully contract was entered into, do you? Your statement is only based on information is it not?

A. My information was based upon the report handed to the Court by L. H. Kelly, Prosecuting Attorney for the County of Braxton who was our legal *advisor* at that time.

Redirect.

By Mr. HALL:

Q. 1. In your deposition above you speak of the present levy; what levy do you mean?

A. The levy of the 1899 term.

And *furthur* this deponent saith not.

IRA H. GREATHOUSE.

1 d.

No other witness appearing and by agreement of parties the *furthur* taking of these depositions is adjourned and con-
125 tinued until tomorrow at the same place and between the same hours before E. G. Rider, a Notary of Braxton County, West Virginia.

Given under my hand this the 17th day of April, 1902.

C. H. BLAND, *Notary.*

Costs, to wit:

C. H. Bland, Notary, 8 hours @ 75c	$6.00
Four wit. cer. 30c	1.20
Taxing costs	20
Notary	$7.40

Sheriff:

I. —. Greathouse 2d 9m	$2.90
J. T. Frame, 1d	1.00
John M. Frame, 1d 3m	1.30
Witnesses	$5.20

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

I, C. H. Bland, Notary for said County, do certify that the foregoing depositions of I. H. Greathouse, Amos Bright J. T. Frame and John Frame were duly taken, sworn to and subscribed before me at the time and place therein and the notice hereto attached set out.

Given under my hand this April 17th, 1902.

C. H. BLAND, *Notary.*

APRIL 18TH, 1902.

The taking of these depositions is resumed pursuant to the continuance of yesterday before E. G. Rider, Notary Public, by agreement of parties.

Present B. P. and V. B. Hall, attorneys for plaintiff, and plaintiff A. T. Taylor in person, and Fred L. Fox and C. C. Hines, attorneys for James V. Tully.

126 Then came A. N. LOUGH, a witness of lawful age, introduced on behalf of plaintiff, who being first duly sworn, on his oath says:

Q. 1. State your age and residence?

A. I am 55 years old, and reside near Bealls Mill, in Braxton County.

Q. 2. ——.

—. I think I moved there in 1868.

Q. 3. Are the bridges across Taylors Run and Frames Run on the road between here and your house?

A. Yes, sir.

Q. 4. Have you ever had any — in building bridges and abutments for bridges; if so state what experience you have had?

A. I have had some experience. Well, I have built at least five bridges. One across Grannies Creek, one across Little Otter Creek, and also near Jake Brady's a branch of Little Otter, and one near where B. E. Rider used to live, a branch of Grass Lick of Steer Creek, one across Charley Run near A. M. Lough's; I superintended the building of the abutments to the Sugar Creek bridge; also a

six foot front on the abutments to the Otter bridge, and otherwise shape- up to receive the bridge.

Q. 5. How long did the abutments of Grannies Creek Bridge built by you stand?

A. I think it must — near thirty years.

Q. 6. If they finally gave way what caused it?

A. The logs in Curtin's boom. The jam of logs went under the bridge and hoisted it off, the bridge being anchored to the abutments.

Q. 7. What kind of a bridge was the one across Grannies Creek? that you have just spoken of?

A. It was a *woden* bridge covered.

Q. 8. Do you mean abutments were torn up by the Bridges raising and pulling the anchors?

A. Yes, sir.

Q. 9. Suppose the abutments for the Taylors Run bridge
127 in round numbers cost $1175.00, about what part of that did the Grannies Creek abutment cost?

A. Less than one fourth.

Q. 10. How does Grannies Creek compare in size with Taylors Run and Frames Run?

A. It's larger. I should think Grannies Creek drains three fourths more territory than both of the other runs.

Q. 11. About how much territory does Frames Run drain?

A. I don't believe that it would exceed thirty acres.

Q. 12. What did the abutments for the bridge across Sugar Creek cost?

A. $195.00, and that includes the filling of the approaches on both sides.

Q. 13. When *they* were they built?

A. They were built in August, 1898.

Q. 14. For what kind of a bridge were they built?

A. Iron bridge.

Q. 15. How does the span at Sugar Creek compare with the span at Taylors and Frames Run?

A. The span at Sugar Creek was 35 feet, and that at Taylors Run 40 feet, and at *Rames* Run 28 feet.

Q. 16. How does Sugar Creek compare with Frames and Taylors Run, as to the volume of water discharged?

A. About four-fifths more than both.

Q. 17. Have you seen and examined the abutments at Taylors Run and Frames Run and Old Womans Run, as to the stone work?

A. Not particular; I have noticed it as I was passing around.

Q. 18. What would you say as to the necessity of having as much stone as there is in those abutments?

A. There is no necessity for as much cut stone.

Q. 19. About how much more stone has been used than was necessary?

A. Well, at least a third more cut stone.

Q. 20. At the time of the building of the Sugar Creek abutments and Otter Creek abutments did you hold any official position in this County?

128 A. I was road commissioner on the north side of Elk in Otter District.

Q. 21. Did you as such commissioner have charge of the road on which are Frames Run, Taylors Run, Otter, and Sugar Creek bridges?

A. Yes, sir.

Q. 22. How long did you hold that position?

A. Two years.

Obj. Defendant J. V. Tully, by counsel, excepts to the deposition of this witness as above because it is immaterial, and especially to the portions thereof in which witness gives his opinion as to the necessity of the amount of stone work done on the Taylors Run and Frames Run bridges, and also that portion thereof in which the witness speaks of the comparative cost of the bridge work done by defendant Tully and the work done by the witness, for the reason that there is no evidence showing that the work done by this witness in any way compared with the work done by Tully in point of workmanship and stability.

Cross-examination.

By Mr. Fox:

Q. 1. Are you a stone mason?

A. No, sir. I have worked some at it, but I am not a stone mason.

Q. —. What would you say as to whether the bridge abutments you speak — as having been built by you, or under your supervision, being anything as near as substantial as the abutments built by the defendant J. V. Tully?

A. They are not as substantial, but they will answer the purpose for which they were intended.

Q. 3. How long will they answer the purpose for which they were intended?

A. Just as long as the foundation remains all right, and that is just the way any of them will fall down.

Q. 4. Is it not a fact that when the County Court of Braxton County erected the bridges across Otter Creek and Grannies Creek the abutments built by you were found *insufficient*, and was
129 it not *nescessary* in one case to make extensive repairs, and in the other case to use piles instead of the abutments made by you?

A. Yes, sir. Those bridges were swept away, and the abutments torn up by high water, is why they had to be repaired; and *furthur*, in order to make a shorter bridge across Otter, we built a six foot front on one of the abutments.

Q. 5. What kind of stone was used by you in building the abutments you speak of?

A. Mostly sand stone.

Q. 6. Did you use any flag rock or loose stone?

A. Yes sir.

Q. 6. Is it not a fact that these abutments were mostly built of flag rock and loose stone?

A. The main front and wing walls, the principal part was split stone, quarried. The filling was picked up, or flag rock.

Q. 7. Did you use any dressed stone or lime in the building of said abutments?

A. Used no lime, but dressed the top stone for the bridge to set on.

Q. 8. Is it not a fact the abutments built by Tully are very near the bank of Elk River, and during high waters are liable to be affected by the water?

A. Yes, sir.

Q. 9. State whether or not in your opinion the abutments built by Tully could be caused to crumble and fall by the high stages in water in Elk River?

A. Yes, sir.

Q. 10. Is it not a fact that the only way this could happen ——

A. No, sir.

Q. 11. Please explain how this could happen without undermining the foundations to the abutments?

A. Freezing.

Q. 12. What kind of abutment would you consider the more apt to stand against freshets and freezing, an abutment of the kind built by you, or one of the kind built by Tully?

A. The cut stone would stand the best. An abutment will stand much better under an iron than under a wooden bridge
130 especially when the wooden bridge is anchored to the abutment.

Q. 13. But the abutments built by Tully will stand a great deal longer under a wooden bridge than will those built by you; is not that a fact?

A. Well, I don't know that it is.

Q. 14. Then you consider the abutments built by you as good as those built by Tully, do you?

A. They answer the same purpose.

Q. 15. And will they answer that purpose as long in your opinion?

A. Well, I don't see why they won't.

Q. 16. The Taylors Run bridge and Frames Run bridge are on the main Elk River road, and are used by a majority of the people in the lower end of the County in traveling to and from the Court House at Sutton are they not?

A. Yes.

Q. 17. And it is of importance to the people of the lower end of the County that these bridges be kept open to travel is it not?

A. Yes, sir.

Q. 18. As a citizen and taxpayer of the County, do you consider the best policy for the County Court to pursue in building bridges to be the policy that provides substantial and permanent bridges, rather than those liable to be washed out during high stages in the river?

A. Yes, sir.

Q. 19. What is the *diference* in the cost of workmanship like that done by Tully on the Taylors Run and Frames Run bridges, and

that done by you on the Sugar Creek bridge and other abutments built by you?

Obj. Plaintiff by counsel objects to this question because if the workmanship is unnecessarily expensive, it was improper to that kind of work done.

A. I am not able to tell you that.

Q. 20. The cost of the abutments built by Tully would be a great deal more than the other ones built by you would it not?

A. Yes, sir.

Q. 21. How — does the plaintiff in this cause live from the Taylors Run and Frames Run bridges?

131 A. He lives very close.

Q. 22. He owns real estate near said bridges does he not?

A. Yes, sir, not very far off.

Redirect.

By Mr. HALL:

Q. 1. State whether or not the abutments to the Sugar Creek bridge and the Otter Creek bridge are as much exposed to high water in Elk River as the abutments to Taylors and *Frams* Run bridges, and the Old Womans Run bridge?

A. They are not as much exposed, I mean the Taylors Run and Frames Run bridges are not as much exposed. The Old Womans Run bridge is not as much exposed either.

Q. 2. Have the abutments to the Sugar Creek and Otter Creek bridges ever given way in any way?

A. Not that I know of under the iron bridges.

Q. 3. How about the abutments to the bridge over Old Womans Run?

A. One of them has give considerably.

Q. 4. With what did you fill the approaches to the Sugar Creek bridge?

A. With rough rock and sand—mostly sand.

Q. 5. Do you know with what the approaches to the bridge across Old Womans Run, Taylors and Frames Runs are filled?

Obj. Defendant J. V. Tully objects to this question because the approaches were filled in by parties other than defendant Tully, and this question is therefore improper.

A. Only the two, The Frames Run and Taylors Run were filled in with sand and a little broken rock on top.

Q. 6. What would you say as to the public necessity of the bridges across Taylors, Frames and Old Womans Runs?

A. The two over Frames and Taylors Runs were an absolute necessity, which I don't think the other was.

Q. 7. State whether or not there was any necessity for the kind of a bridge that was built across Frames Run?

132 Obj. Objected to by defendant Tully, because the witness was questioned about this matter in his examination in chief, and because it is *immeterial.*

A. I think the culvert would have been less expensive, and better than the bridge we have there.

Recross.

By Mr. Fox:

Q. 1. The Old Womans Run bridge is on the most direct route from Sutton to the upper end of Braxton County, and is used by a greater number of people in that part of the County, in traveling to and from Sutton, and is as much a necessity for those people as the Taylors Run and Frames Run bridges are to the people of the lower end of the County; isn't that true?

A. No, sir, I don't think so.

Q. 2. Why not?

A. There was a very good way to pass by that place without a bridge, by going up the creek a little way.

Q. 3. Don't you know that high water in Elk River covers the bottom at the mouth of Old Womans Run, covering the road, and that it was impossible to cross, not only during the high water, but often for some time afterward, because of the sediment that had been left by the high water?

A. Not any more so than many other places along public roads.

Q. 4. But the condition was such as to make this bridge a great convenience to the people of Sutton and the upper end of Braxton County.

A. It is quite a convenience.

Redirect:

Q. 1. State whether or not the Elk River road above the Old Womans Run bridge, leading to it from the upper end of the
133 County is in several places low down to the edge of the water?

A. Yes, sir.

Q. 2. State whether or not when you can travel this road you can get around the back water in Old Womans Run?

A. Yes, sir.

Recross.

By Mr. Fox:

Q. 1. State whether or not the road on which the Old Womans Run bridge is located is not used in hauling a large portion of the coal used in the town of Sutton, and whether or not for a good portion of the winter seasons it was almost impossible for teams to cross Old Womans Run before the erection of the bridge?

A. Yes, a considerable portion of the coal has been hauled across Old Womans Run to Sutton, but I have not found that the worst part of the road.

Q. 3. State whether or not the road at the mouth of Old Womans Run passes through low swampy ground peculiarly affected by high waters in Elk River, and if the same was not almost impassable in winter seasons?

A. Yes, sir. It passes around through low ground, and it may be

that at some time during winter seasons it is almost impassable, the same as other parts of the road.

And *furthur* this deponent saith not.

A. N. LOUGH.

1 da. 5 mi.

JACOB FRAME, a witness of lawful age, introduced on behalf of plaintiff, being first duly sworn, deposes and says:

By V. B. HALL, Esq.:

Q. S. State your age and residence?

A. I am 32 years old. Braxton County.

Q. 2. State whether or not you assisted Jas. Tully in the construction of the abutments for the bridges across Taylors Run and Frames Run?

A. Yes, sir.

134 Q. 3. What did you do?

A. I worked, making mortar, helped carry *morter* to put on the abutments.

Q. 4. Of what was that mortar composed?

A. Why it was of a river sand, or sediment, muck of one kind and another, I couldn't say just what.

Q. 5. Was any cement used with it?

A. Yes, sir, there was a right smart of cement.

Q. 6. State whether or not the river sand or sediment used in the composition of that cement or mortar was screened?

A. No, sir, it wasn't screened at all. It was just as it was shoveled from the sand bar at the river.

Q. 7. How were those abutments constructed?

A. Well, they were made out of stone that was cut for the purpose and were laid around a layer at a time, and the opening that was between that is the inside part of the wall was filled in with large like ballast and the top part was ballast beaten up fine and cement put over the top of that, ready for another course of stone.

Q. 8. Was the lower part of the vacant space between the walls filled with cement?

A. No, sir, they were just coarse stone, and cement over the top of that course.

Q. 9. State whether or not the rocks used in filling that place were so large that cracks or vacant places were left; that is, was the place filled in *solod?*

A. The inside of that space of the lower part was thrown in of coarse stone, which left some vacant places, and the top was fine stone beaten and cemented.

Q. 10. Were you present all the time that the work was going on on the abutments to said two bridges?

A. Why, on the t-ree abutments to the two bridges, and I helped excavate for the fourth abutment for the second bridge, pretty much all.

Q. 11. State whether or not you were present all the time while

the two abutments for the bridge at Taylors Run, and the
135 lower abutment for the bridge at Frames Run were being constructed?

A. Yes, sir, I was *ther* all the time, to the best of my knowledge, I don't think I lost any time.

Q. 12. State whether or not you saw the plaintiff A. T. Taylor about there while the lower abutment for the bridge at Taylor's Run was being built?

A. I don't remember of seeing him there.

Q. 13. Do you know where he was at that time?

A. I think he was hunting in the mountains.

Q. 14. State whether or not A. T. Taylor was around there any while lower abutment to the Frames Run bridge was being built?

A. No, sir, I didn't see him there.

Q. 15 State whether or not the plaintiff spent very much time or any time about the work, or around while the work was going on, at any time while you were there?

A. I don't remember seeing him there on any occasion other than passing to and from Sutton.

Q. 16. State whether or not you ever heard J. V. Tully say anything about how the work looked; if so, state what it was?

A. Well, I heard the remark, some one say the abutments didn't set square and didn't look right, and he said he didn't care a *dam* how they looked, for he didn't lay them off.

Q. 18. State whether or not you helped to place the bridge on the abutments at Taylors Run?

A. Yes, sir, I did.

Q. 19. State whether or not the abutments were set square?

A. To the lower bridge they wasn't, the Taylor Run bridge.

Cross-examination.

By Mr. Fox:

Q. 1. A. T. Taylor lives near the Taylor Run and Frame Run bridges, does he not?

A. Yes, it is some distance from the Frames Run. It is *somthing* like a quarter of a mile.

136 Q. 2. He passes over these bridges in traveling to and from Sutton, does he not?

A. He does now since they were built the most of the time I guess, that is, as far as I know.

Q. 3. And he passed by where you were working on these abutments when he visited Sutton, did he not?

A. Yes, sir.

Q. 4. He passed where you were working quite frequently, didn't he?

A. While he was at home he did.

Q. 5. He knew all the time that the work was progressing, did he not?

A. I suppose so.

Q. 6. What would you say as to the public necessity for the bridges across Taylors Run and Frames Run?

A. Well, there are a good thing to have a bridge, if they are properly made.

Q. 7. Is it not a fact that these bridges were an absolute necessity, at the time they were erected?

A. Them or some other bridge.

Q. 9. These bridges are on the main Elk River road, and are used by a large majority of the people in the lower end of the county in traveling to and from Sutton, is that not a fact?

A. Yes, sir, to a considerable extent

Q. 10. What have you to say as to whether or not the abutment to the Taylor Run and Frame Run bridges are of a substantial and permanent nature, and whether or not they are erected in a good workmanlike manner?

A. Why, there were portions of it that were not as good as they should have been.

Q. 11. Have you ever seen any bridge abutments in this County as substantial as this work?

A. Well, I don't know about that, but I have seen other abutments. These are the only ones that I ever helped build.

Q. 12. Have you any knowledge of what is a good job of masonry?

137 A. Yes, sir, I think I can tell good work from bad.

Q. 13. In what respect, then, with regard to the abutments we have been talking about, are they not as good as they should have been?

A. Well, the grade of mortar or cement that was used in it wasn't as good as it should have been.

Obj. Defendant J. V. Tully objects to the deposition of this witness given in his examination in chief because immaterial.

Obj. Plaintiff, by counsel, objects to all the questions asked this witness, and the answers thereto as to the necessity of said bridges because immaterial.

And *furthur* this deponent saith not.

JACOB FRAME.

1 da. 5 mi.

No other witness appearing the *furthur* taking of these depositions is adjourned and continued until tomorrow, at the same place and between the same hours.

Given under my hand this April 18, 1902.

E. G. RIDER, *Notary.*

APRIL 19, 1902.

Met pursuant to the adjournment of yesterday, and the *furthur* taking of these depositions is resumed at the same place and between the same hours.

Present as yesterday.

Then came W. H. TAYLOR, a witness of lawful age, introduced on behalf of plaintiff, who being first duly sworn, deposes and says:

By Mr. HALL:

Q. 1. What relation, if any, are you to the plaintiff?
A. He is my uncle.
Q. 2. Do you know J. V. Tully?
A. Yes, sir.
Q. 3. Do you know of him building the abutments to the bridges across Taylors Run and Frames Run?
138 A. Yes, sir.
Q. 4. Did you help build the abutments?
A. Yes, sir.
Q. 5. State whether or not you worked all the time from the beginning of the work until it *was* finished?
A. Yes, sir, I worked all the time about one half day.
Q. —. How ma-y days did you work?
A. I think I worked about 26 days, is my *recolection*.
Q. 7. Do you know where A. T. Taylor, the plaintiff, was while they were building the lower abutment to the Taylors Run bridge?
A. I suppose he was in the mountains, he wasn't about home.
Q. 8. When he left home did he say anything as to where he was going?
A. He said he was going to the mountains.
Q. 9. Where was he during the building of the upper abutment to the Taylors Run bridge?
A. He was about home.
Q. 10. Do you know where he was during the time the lower abutment to the Frames Run bridge was being built?
A. I suppose he was in Roane County.
Q. 11. Why do you suppose he was in Roane County?
A. He went away from home and said he was going there.
Q. 12. Where was he while the upper abutment was being built?
A. He was about home.
Q. 13. Do you know whether or not he was attending Court here at that time?
A. Yes, sir.
Q. 14. Did you and A. T. Taylor live at the same place while these abutments were being built?
A. Yes, sir.
Q. 15. While you were working on said abutments was Mr. Perrine, a member of the County Court, present on one occasion?
139 A. Yes, sir.
Q. 16. State whether or not there was any difference in the manner in which the work was done while he was present, than he was not?
A. Yes, sir, there was a difference.
Q. 17. What difference was there?
A. There was more pains taken when he was there.

Obj. Defendant J. V. Tully, by counsel, objects to the deposition of this witness, because immaterial.

Cross-examination.

By Mr. Fox:

Q. 1. A. T. Taylor was at home a good portion of the time while these abutments were being built, was he not?

A. No, sir, I think he was away more than he was at home.

Q. 2. He knew that they were being constructed, and was at home when they were completed, was he not?

A. He was at home, or about home.

Q. 3. During the time he was at home he was frequently around the places where said abutments were being built, was he not?

A. He passed there a few times, going to town and back, and I remember of him being there once, when the upper abutment of the lower bridge was finished.

Q. 4. He passed where you were working almost every day during the time he was at home, didn't he?

A. No, sir, I don't think he passed every day.

Q. 5. What would you say as to the public necessity of the bridges across Frames Run and Taylors Run?

A. Well, bridges were needed there, but such bridges as had been there before, I think would have been good enough.

Q. 6. The bridges now across Frames Run and Taylors Run are of a much more permanent and substantial nature than those formerly across said runs, and much less liable to be affected by high waters, or other destructive forces, is that not a fact?

A. The high water has raised the floor on one of the
140 bridges already and some of the bolts and the hand railing is already broken. The abutments are stronger and better than the ones that were there before.

Obj. Defendant J. V. Tully, by counsel, objects to the last answer of this witness in so far as he speaks of the damage done to the bridge across one of the streams mentioned, for the reason that defendant Tully has nothing whatever to do with the work on the bridges proper. He also objects to the answer of witness to question 5, of his cross examination, in which he gives his opinion of the kind of bridges *necessqry*.

And *furthur* this deponent saith not.

W. H. TAYLOR.

Then came JOHN NEWLON, a witness of lawful age, introduced on behalf of plaintiff, who being first duly sworn, deposes and says:

By Mr. HALL:

Q. 1. Look at papers here handed you marked Exhibit "Newlon 1" and state whether or not it is a correct copy of the settlement of the Sheriff of Braxton County for the years 1897, 1899 and 1900?

A. Yes, sir, it is a complete copy except as to the District Road Funds.

Q. 2. Look at paper here handed you marked Exhibit "Newlon

No. 2," as a part of this question and state whether it is a correct copy of the settlement of the Sheriff of Braxton County for 1898?

A. Yes, sir, it *is* a correct copy except as to the District Road Funds.

Q. 3. Look at paper here handed you marked Exhibit "Newlon No. 3," as part of this question, and state whether or not the first page is a correct copy of an order made by the County Court concerning order No. 91, for $2184.97, payable to the American Bridge and Iron Company, and whether or not the second page is a correct copy of said order No. 91?

A. Yes, sir.

Q. 4. Look at paper here handed you marked Exhibit
141 "Newlon No. 4," as a part of this question and state whether or not it contains correct copies of nine County orders, filed with the Sheriff's settlement in the office of the Clerk of the County Court of Braxton County?

A. They are except as to the endorsements on the back of them. That wasn't copied.

Q. 5. Across the face of each order there is a memorandum or endorsement in red ink. What does that indicate?

A. That indicates that the Sheriff got credit for them in his settlement.

Q. 6. This endorsement on two of them does not give the year. Do you know in what settlement the Sheriff got credit for these two orders?

A. They were filed in the settlement of 1900.

Q. 7. Are those memoranda in red ink copies of endorsements on the face of the original orders, or simply memoranda made by yourself?

A. They are copies of the endorsement made on the face of the original orders.

Q. 8. State whether or not you found said orders on file with the settlements of the Sheriff indicated by the respective memoranda?

A. Yes, sir, I did.

Q. 9. What office, if any, do you hold in Braxton County?

A. Deputy County Clerk.

Obj. J. V. Tully, by counsel, objects to the deposition of this witness and to the filing of the copies of record *refered* to in his deposition, because the facts shown thereby are immaterial in this case.

Cross-examination.

By Mr. Fox:

Q. 1. The County orders, copies of which were filed by you, and which were marked paid, and filed in the settlements of the years 1898 and 1899, were paid before the awarding of the contract to J. V. Tully for the building of the abutments to bridges in
142 Braxton County, mentioned in plaintiff's bill, were they not?

A. Yes, sir.

Q. 2. What was the assessed value of all the taxable property in

Braxton County upon which the levy made at the July term, 1899, of the County Court of Braxton County was laid?

A. The amount is $2119479.00. This amount is the aggregate of the real and personal property for said year. The assessed value for the railroads for said year was $174652.73, which is *adition* to the assessed value of the real and personal property.

And *furthur* this deponent saith not.

JNO. NEWLON.

No other witness appearing, the *furthur* taking of these depositions is continued until Monday, April 21st, 1902, at the same place and between the same hours.

E. G. RIDER, *Notary.*

APRIL 21ST, 1902.

The *furthur* taking of these depositions is resumed at the same place and between the same hours.

Present, B. P. Hall, attorney for plaintiff, and plaintiff in person, and C. C. Hines, attorney for defendant J. V. Tully.

Then came FRANK FRAME, a witness of lawful age, introduced on behalf of plaintiff, who being first duly sworn, on his oath says:

By Mr. HALL:

Q. 1. Are you acquainted with A. T. Taylor, and J. V. Tully?

A. Yes, sir.

Q. 2. Do you know of J. V. Tully building the abutments to the bridges across Taylor's and Frame's Runs?

A. Yes, sir.

Q. 3. Did you work at either of said abutments; if so, at which one?

A. I worked on the abutment at the upper bridge, Frame's Run.

Q. 4. While you were working at said abutment, state
143 whether or not W. J. Perrine, one of the commissioners of the County Court of Braxton County was present?

A. Yes, sir, he was there.

Q. 5. Was Tully there while Perrine was there?

A. Yes, sir.

Q. 6. State whether or not there was any *diference* in the manner in which Tully had the work done while Perrine was present, and when he was not?

A. Yes, sir, there was a *diference.*

Q. 7. What was the difference?

A. He had the rock broke finer, and more mortar put on, and was more particular to have the work done right while he was there.

Q. 8. In what part of the wall was this rock and mortar that you speak of?

A. It was a kind of a double wall, and it was the space between that was filled with rock, and pounded up, and this mortar put on to form a cement, I suppose was the intention of it

Q. 9. How had they been filling this space before Perrine was there and how did they do it afterwards?

A. Before Mr. Perrine was there they wasn't so particular about putting on mortar or *punding* up the rocks. While he was there he put on a great deal more mortar and *ponded* up the rock, and was more particular about getting it filled up. It went on about after the old fashion after he left.

Q. 10. Are you one of the parties who furnished the timbers or lumber used for the foundations on which to begin the rock at the two bridges mentioned?

A. Yes, sir.

Q. 11. How much was paid you by Tully for the timber for two bridges?

A. $50. for the abutment timbers, and $6.00 for derrick poles.

Q. 12. Were the derrick poles you speak of any part of the abutments or bridges, or were they used by Tully as part of the *machinary* for handling the rock?

144 A. Yes, sir, they was used as part of the *machinary* for handling the rock. They were no part of the abutment to the bridges.

Q. 13. Were you not about the bridges while the work of constructing the abutments was going on?

A. I was, frequently. I was at Frames Run nearly all the time while the work was going on, and the lower one frequently.

Q. 14. How far is the Frames Run bridge from where you lived?

A. Well, it's a short distance, I wouldn't say positive, but it's about 200 yards, it might be less.

Q. 15. Did you ever see the plaintiff, A. T. Taylor, sitting or loafing around either place?

A. I can't say that I ever did. I have seen him pass there a few times, but as to sitting or loafing around, I don't think I ever did.

Q. 16. Do you or not know whether while said work was going on the plaintiff was away anywhere, if so, where?

A. He was away some where, during the work on the upper bridge, Frames run bridge.

Obj. To this deposition defendant, James V. Tully, by counsel, excepts because immaterial, irrelevant and improper.

Cross-examination.

By C. C. HINES:

Q. 1. What part of the abutments to the bridges did you do?

A. I worked on the excavation, digging out the hole of the abutment to the bridges. After we got with the excavation I wheeled sand, and made mortar and various things.

Q. 2. You were working all the time during work hours, were you?

A. Yes, sir, I don't have any *reccollection* after I commenced working there, I think I staid till it was finished up.

Q. 3. I mean you was putting in all your time at work through the day, the time you worked there during working hours?

145 A. Yes, during working hours we, I think, worked about ten hours a day.

Q. 4. Then if you were working all the time you didn't have much time to look around to see what the others were doing, and how they were doing their work, did you?

A. Well, a part of the time I was helping to wheel mortar, and was helping to do the work, it wasn't any trouble to see.

Q. 5. You don't pretend to say that the work done on said abutments was not a first class job, do you?

A. I never seen the specifications for this job. I thought the work could have been better done than it was.

Q. 6. Then, as I understand you, the abutments were very poorly constructed, were they?

A. Well, the outside work of the abutments looked all right, but I thought there could have been a good deal better job done on the filling up of them, the rocks could have been pounded finer.

Q. 7. Are you a stone-mason?

A. No, sir, I ain't a stone-mason, but have worked some in rock.

Q. 7. How long was Mr. Perrine there during the time you speak of?

A. I couldn't state positive as to that; he was there a right smart while, probably an hour or two.

Q. 8. What was you doing while he was *ther?*

A. I think I was wheeling sand, and probably some mortar.

Q. 9. But you are positive that the work was done better, more mortar used during the time he was there?

A. Yes, sir, I am.

Q. 10. Did you furnish the timber spoken of by you, prepared and ready for the foundations of the abutments?

A. Yes, sir.

Q 11. You are mad at Tully, are you not?

A. No, sir, I have nothing at all against Jim Tully.

Q. 12. You had a *missinderstanding,* didn't you?

A. Never that I knew of.

146 Q. 13. When did you first tell plaintiff that you would make the statement you have made in this cause?

A. The first talk we ever had about having me summoned in this case, I think, has been *somthing* about a week ago.

Q. 14. Was that the first conversation you ever had about the matter?

A. I think it was, so far as this suit was concerned. We might have talked about the bridges or something before the suit was ever thought of by me especially.

Q. 15. Then he had you summoned without knowing what you would state, did he?

A. Well, we had a little talk about it about a week ago.

Q. 16. At the time he summoned?

A. No, sir, he never summoned me until today.

Redirect.

By Mr. HALL:

Q. 1. The price of $50.00 — deliver the timber or lumber for the two bridges on the ground at the bridges?

A. Yes, sir, I had it hauled up and put right on the ground.

And *furthur* this deponent saith not.

FRANKLIN FRAME.

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

I, E. G. Rider, a notary of said County, do certify that the foregoing depositions of A. N. Lough, Jake Frame, W. H. Taylor, John Newlon and Frank Frame were duly taken, sworn to and subscribed before — at the times and place therein, and in the notice hereto attached set out. Given under my hand this 1st day of April, 1902.

E. G. RIDER, *Notary.*

Costs:

	E. G. Rider, Notary, 8 hours @ 75 c	$6.00
147	" 3 witness certificates @ 30 c	1.20
	" Taxing costs	.20
		$7.40
Sheriff		1.50

Witnesses:

A. N. Lough, 1 da. 5 mi	$1.50
Jacob Frame, 1 da. 5 mi	1.50
W. H. Taylor, 1 da. 3 mi	1.30
Franklin Frame, 1 da. 3 mi	1.30
	$5.60

Teste: E. G. RIDER, *Notary.*

EXHIBITS FILED WITH DEPOSITION OF WITNESS JOHN NEWLON.

"NEWLON NO. 1."

To the Honorable County Court of Braxton County:

The undersigned commissioners appointed to make settlement with John Adams, Sheriff of said County for the fiscal year, ending June 30th, 1900, submit the following as the result of such settlement:

John Adams to Braxton County on Account of County Fund.

	Dr.
To balance due County Fund last year...	$120.93
To levy on Realty for County purposes...	7727.89
To levy on Personalty for County purposes	2827.89
To Office rent received from W. F. Frame.	20.00
To Office rent received from Town of Sutton	20.00
To cost collected State against Jack Brown.	12.00
To W. Va. & *Pittsbugr* R. R. Tax certified	827.05
148 To C. C. & S. R. R. Tax certified..	24.37
To Holly River R. R. Tax.....	156.00
To amount from sale and redemption of Delinquent lands.....	422.77
To amount collected on Delinquent List, 1898	8.21
To Land Redemption certified by Auditor.	124.15
	$12339.45

Contra.

By Am't County Claims Cancelled A....		$7199.92
By Am't Pettit Jury Claims Cancelled A.		885.40
By Am't Grand Jury Claims Cancelled A.		167.30
By Am't County Claims Cancelled H....		2461.91
By Am't *Pettite* Jury Claims Cancelled H.		437.10
By Am't Grand Jury Claims Cancelled H.		63.60
By Delinquent List on Realty A.....		65.55
By Delinquent List on Personalty A....		57.52
By Taxes Unascertainable A.....		13.10
By Delinquent List on Realty H.....		113.02
By Delinquent List on Personalty H....		13.85
By Taxes Unascertainable H.....		18.72
By Exonerations certified		35.67
By 6 per cent. commission on $10893.67..		653.62
By 2 per cent. commission on $1007.42 R. R. Tax.....		$20.14
By Amount due County on this fund....		133.02
	$12339.45	$12339.45

John Adams to Braxton County on Account of Interest Fund.

To balance due this Fund last year.....	$2197.51
To Levy on Realty.....	2588.22
To Levy on Personalty.....	958.77
To C. C. & S. R. R. Tax, certified..	8.12
149 To W. Va. & P. R. R. Tax, certified	275.68

To Holly River R. R. Tax.....	52.00	
To Land Redemptions certified	62.07	
To Am't collected from Delinquent Lands, 1898	4.14	
To sale and redemptions Delinquent Land.	211.38	
To Am't received from E. A. Berry late Sheriff	669.00	

CONTRA.

By 135 R. R. Coupons $30.00 each cancelled		4050.00
By interest paid on same.....		577.79
By Delinquent List on Personalty.....		25.21
By Delinquent List on Realty.....		60.54
By Taxes Unascertainable		10.62
By Exonerations certified		13.73
By 6 per cent. commission on $3714.46...		222.86
By 2 per cent. commission on 669.00 from E. A. Berry.....		13.38
By 2 per cent. commission on 335.80 R. R. Tax		6.72
By Am't due County on this Fund.....		2046.04
	$7026.89	$7026.89

John Adams to Braxton County on Bridge Fund.

To Am't due this Fund last year.....	$822.09	
To Levy on Realty.....	1932.99	
To Levy on Personalty.....	719.05	
To C. C. & S. R. R. Tax certified.....	6.10	
To W. Va. & B. R. R. Tax certified.....	206.77	
To Holly R. R. Tax certified.....	39.00	
To Am't Sale and Redemption Delinquent Lands	150.55	
150 To Am't from E. A. Berry, late Sheriff	$4074.32	
To Am't Collected from Delinquent *Taxes*, 1898	1.72	
To Land Redemptions, certified.....	31.04	

CONTRA.

By Am't of Vouchers cancelled A.....		$6931.50
By Am't of Vouchers cancelled H.....		563.77
By Delinquent List on Personalty.....		18.93
By Delinquent List on Realty.....		44.78
By Tax Unascertainable		7.96
By Exonerations certified		9.93
By 6 per cent. commission on $2753.75...		165.22

By 2 per cent. commission on $4074.32 from E. A. Berry		81.48
By 2 per cent. commission on $251.97 R. R. Tax		5.04
By Am't due County on this Fund		154.93
	$7983.63	$7983.63

John Adams, Sheriff, to Braxton County on account of Sinking Fund.

To Am't due this Fund Last Year	$1146.60	
To Levy on Realty	1544.67	
To Levy on Personalty	578.00	
To C. C. & S. R. R. Tax certified	4.87	
To W. Va. & P. R. R. Tax certified	165.41	
To Holly River R. R. Tax	31.20	
To Land Redemptions certified	12.41	
To Am't collected on Delinquent List 1898.	.83	
To Am't Sale and Redemptions Delinquent Lands '97 & '8	42.28	
151 CONTRA.		
By Am't Delinquent List on Personalty		$15.29
By Am't Delinquent List on Realty		36.87
By Tax unascertainable		6.37
By Exonerations certified		4.43
By Note W. O. Morrison *et als.* 8/5, '99 at 11 mo		700.00
By Note I. H. Greathouse *et als.* 8/5, '99 at 11 mo		446.62
By 6 per cent. commission on $2178.19		130.69
By 2 per cent. commission on $201.48 R. R. Tax		4.03
By Am't due on this fund		2181.97
	$35026.27	$35026.27

Given under our hands this 10th day of July, 1901.

E. S. BLAND,
FRED L. FOX,
Commissioners.

STATE OF WEST VIRGINIA:

BRAXTON COUNTY COURT CLERK'S OFFICE.

I, C. K. Newlon, Clerk of the said County Court, do certify that the foregoing is a true copy of the Sheriff's settlement filed and recorded in my office, as to the County, Interest, Bridge and Sink-

ing Funds, it being a complete copy of said settlement except as to the road funds of the various districts.

Given under my hand *thie* 17 day of April, 1902.

C. K. NEWLON, *Clerk.*

To the Honorable County Court of Braxton County:

The undersigned commissioners appointed to make settlement with John Adams, Sheriff of said County, for the fiscal year ending June 30th, 1899, submit the following as the result of such settlement:

152 John Adams, Sheriff, to Braxton County, on Account of County Fund.

DR.

To levy on Realty for County purposes...	$7752.60	
To Levy on Personalty for County purposes	2805.22	
To Costs Witness Fees, State *vs.* J. P. Albert	13.30	
To Am't rec'd from W. Va. & P. R. R. Stock	1135.13	
To Am't rec'd from L. H. Kelly office rent	81.65	
To Am't rec'd from Town of Sutton office rent	20.00	
To Am't certified by Auditor C. C. & S. R. R. Tax	827.00	
To Am't certified by Auditor land redemptions	30.07	
To Error in Credit last year in District Road Fund	87.00	
To Am't collected from Delinquent List, 1897	4.05	$12780.44

CONTRA.

By balance due Sheriff on last settlement..	$378.91	
By Am't of County Claims cancelled (Adams)	7539.11	
By am't of Grand Jury Claims cancelled (Adams)	296.70	
By Am't of *Pittite* Jury Claims cancelled (Adams)	936.96	
By Am't of County Claims cancelled (Rollyson)	1742.28	
By Am't Grand Jury Claims cancelled (Rollyson)	104.40	
By Am't of *Pettite* Jury Claims cancelled (Rollyson)	511.40	
153 By Delinquent List on Realty....	474.90	
By Delinquent List on Personalty.	55.53	

By Delinquent List on Unascertainable...	12.29	
By Exonerations (Adams).....	17.24	
By Error in items of back taxes last year..	5.38	
By Exonerations (Rollyson).....	9.24	
By 5 per cent. commissions on $10706.93 receipts	535.35	
By 2 per cent. commissions on $1986.55 receipts R. R.....	39.73	$12659.51
To balance due County Fund.....		$120.93

John Adams, Sheriff, to Braxton County on Account of Interest Fund.

DR.

To Am't of Levy on Realty.....	$3877.11	
To Am't of Levy on Peirsonalty.....	1402.61	
To balance due this fund on last settlement	1117.86	
To Am't of C. S. R. R. Tax certified by Aud.	12.18	
To Am't W. Va. & P. R. R. Tax certified by Aud.	413.50	
To Am't Redemption of Lands certified by Aud.	15.04	
To Am't Collected from Delinquent Lists last year	1.60	
To Am't rec'd from W. Va. & P. R. R. stock	567.56	
To Am't rec'd from E. A. Berry since last settlement	1555.57	$8963.03

CONTRA.

By 186 R. R. Coupons $30.00 each cancelled		5580.00	
154	By Am't of int. paid on same.....	564.72	
	By Am't Delinquent list on Personalty	27.76	
To Am't Delinquent List on Realty.....		237.46	
By am't of Unascertainable Property.....		615.00	
By -m't of Exonerations certified.....		9.63	
By Am't of back tax *eroniously* charged to Hyer		2.26	
By 5 per cent. commission on $6580.56...		329.03	
By 2 per cent. commission on $425.68....		3.51	$6765.52

John Adams, Sheriff, to Braxton County on Account of Bridge Funds.

DR.

To balance due this Fund last year.....	$2149.69	
To Am't of Levy on Realty.....	1930.16	
To Am't of Levy on Personalty.....	701.31	
To Am't from C. C. & S. R. R. cert. by Auditor	6.09	
To balance from W. Va. & P. R. R. Co....	206.75	
To Am't Redemption of Lands cert. by Auditor	7.52	
To Am't rec'd from E. A. Berry, late Sheriff	1406.26	
To Am't collected from Delinquent list last year	1.60	
To Am't rec'd from W. Va. & P. R. R. Stock	283.78	$6693.16

CONTRA.

By Am't of vouchers filed and cancelled..	$5520.47	
By Am't Delinquent list on Personalty...	13.98	
By Am't Delinquent list on Realty.....	119.58	
By Am't Unascertainable Property.	3.07	
155 By Am't Exonerations certified....	6.71	
By Am't of back taxes *eroniously* charged last year.....	1.32	
By 5 per cent. com. on $3910.23.....	195.51	
By 2 per cent. com. on $496.62.....	9.93	$5871.07
To am't due this fund to balance..		822.09

John Adams, Sheriff, to Braxton County on Account of Sinking Fund.

DR.

To balance due this fund last year.....	$1115.92	
To Am't of levy on realty.....	775.20	
To Am't of Levy on personalty.....	280.51	
To Am't rec'd from C. C. & S. R. R. cert. by Auditor	2.44	
To Am't rec'd from W. Va. & Pittsburg tax cert.	82.80	
To am't rec'd from redemption of Land certified by Aud.	3.01	
To am't rec'd from W. Va. & Pittsburg R. R. Stock	113.51	
To am't collected from Delinquent List last year	.38	$2373.77

CONTRA.

	By amount of delinquent list on personalty	$5.90	
	By amount of delinquent list on realty....	47.05	
	By amount of Unascertainable property..	1.21	
	By amount of Exonerations certified.....	2.15	
	By Note of A. W. Corley and J. S. Hyer payable to Braxton County	1115.92	
	By amount of back taxes *eroniously* charged last year	.71	
	By 5 per cent. com. on $1004.94..	50.25	
156	By 2 per cent. com. on $198.75....	3.98	$1227.17
	To balance due this fund.....		$1146.60

Respectfully submitted,

E. S. BLAND,
JAS. E. CUTLIP,
Commissioners.

STATE OF WEST VIRGINIA:

BRAXTON COUNTY COURT CLERK'S OFFICE.

I, C. K. Newlon, Clerk of said County Court, do certify that the foregoing is a true copy of the Sheriff's settlement filed and recorded in my office as the *the* County, Interest, Bridge and Sinking Funds, it being a complete copy of the said settlement except as to the Road Funds of the various Districts.

Given under my hand this 16th day of April, 1902.

C. K. NEWLON, *Clerk.*

To the Honorable County Court of Braxton County:

The undersigned commissioners appointed to make settlement with E. A. Berry, Sheriff of said County, for the fiscal year ending June 30th, 1897, submit the following as the result of such settlement.

E. A. Berry on Account of County Fund.

DR.

To County levy on real estate and personal property..		$7563.19
To amount rec'd, for R. R. Tax.....		645.01
To Jury Costs certified by Circuit Clerk.....		18.00
To am't rec'd, for office rent H. & K.....		25.00
To am't rec'd, for office rent Sheriff.....		12.50
To am't due Sheriff on the Fund to balance.....		1302.31
		$9566.01

CONTRA.

		Cr.
By	delinquent list on real estate	$709.38
	By delinquent list on personal property	45.61
157	By Exoneration certified	18.70
	By Vouchers in County Claims cancelled	5623.13
By	Vouchers in Grand Jury Claims cancelled	305.50
By	Vouchers in Petit Jury Claims cancelled	1957.80
By	5 per cent. commission on $6789.50	339.48
By	2½ per cent. commission on $645.01 R. R. Tax	12.90
By	balance due sheriff last year	553.51
		$9566.01

E. A. Berry, Sheriff, on Account of Sinking Fund.

DR.

		Dr.
To	balance due on the Fund last year	$185.66
To	Interest on same one year	11.14
To	Levy on real and personal property	1085.72
To	am't rec'd for Railroad Tax	92.15
		1374.67

CONTRA.

		Cr.
By	Delinquent list on real and personal property	$108.19
By	Exoneration certified	2.54
By	5 per cent. commission on 974.99	48.75
By	2 per cent. commission on 92.15 Railroad Tax	1.84
By	balance due this Fund to balance	1213.35
		$1374.67

Thursday, July 15th, 1897.

E. A. Berry, Sheriff, on Account of Bridge Fund.

DR.

To	balance due this fund *last* year	$5038.30
To	levy on real and personal property	2167.29
To	am't rec'd for Railroad Tax	184.29
		7389.88

CONTRA.

By	delinquent list on real estate and personal property	$215.71
	By Exoneration certified	492.00
158	By 5 per cent. commission on $1946.60	97.33
	By 2 per cent. commission on 184.29 Railroad Tax	3.68

By Vouchers in Bridges Claims cancelled	727.61
By am't due the funds to balance	6340.63
	7389.88

E. A. Berry, Sheriff, on Account of Interest Fund.

DR.

To am't due this fund last year	$7089.84
To levy on real and personal property	5422.89
To am't rec'd for Railroad tax	460.72
	$12973.45

CONTRA.

By Delinquent list on real and personal property	$538.08
By Exonerations certified	11.28
By 5 per cent. commissions on $4873.53	243.67
By 2 per cent. commissions on 460.72 Railroad tax	9.21
By R. R. Coupons and interest cancelled	2077.60
By am't due the fund to balance	10103.61
	12973.45

* * * * * * *

Respectfully submitted,

E. S. BLAND,
VAN B. HALL,
Commissioners.

STATE OF WEST VIRGINIA:

BRAXTON COUNTY CLERK'S OFFICE.

I, C. K. Newlon, Clerk of the said County Court, do certify that the foregoing is a true copy of the Sheriffs settlement filed and recorded in my office as to the County, Interest, Bridge and Sinking Funds it being a complete —— of said settlement *exce-t* as to the Road Funds of the various districts.

159 Given under my hand this 16th day of April, 1902.

Teste: C. K. NEWLON, *Clerk.*

EXHIBIT "NEWLON NO. 2."

To the Honorable County Court of Braxton County:

The undersigned commissioners appointed to make settlement with John Adams, Sheriff of said County, for the fiscal year ending June 30th, 1898, submits the following as the result of such settlement.

John Adams, Sheriff, to Braxton County on Account of County Fund.

		Dr.	Cr.
To Levy on Realty for County Purposes..		$7730.03	
To Levy on Personalty for County Purposes		2805.07	
To Jury Costs, certified		42.00	
To Office rent received from J. E. Cutlip..		12.50	
To Office rent received from B. P. Hall....		25.00	
To Office rent received from Dulin & Hall.		25.00	
To Office rent received from A. B. Grimmett		25.00	
To amount rec'd from Delinquent Land Sales		261.90	
To amount rec'd on Redemptions prior to such sale		167.83	
To amount rec'd on Redemptions certified by Auditor		87.43	
To amount rec'd from Auditor Tax on Railroad		921.45	
To amount paid to J. V. Lough by mistake by Court and assumed by and charged to Sheriff as per order entered January 8, 1898		178.25	
160	To amount of back Tax assessed...	5.38	
	To amount due Sheriff to balance..	378.91	
		12666.25	

Contra.

By County Claims cancelled	$8217.05
By Grand Jury Claims cancelled	356.20
By Petit Jury Claims cancelled	2977.80
By Delinquent List on Realty	506.28
By Delinquent List on Personalty	77.55
By Exonerations certified	16.19
By 5 per cent. commission on $9935.08...	496.75
By 2 per cent. commission on $921.45 R. R. Tax	12618.43
	12666.25

John Adams, Sheriff, to Braxton County on Account of Interest Fund.

To Levy on Realty	$3089.31
To Levy on Personalty	1121.72
To amount rec'd, from Auditor R. R. Tax.	368.56
To amount of Redemption certified by Auditor	62.45

To amount rec'd from Delinquent Land sa[illegible]		201.46
To amount rec'd from Redemptions prior to such sale		129.10
To amount rec'd from E. A. Berry, Ex-Sheriff on this Fund		571.65
To amount of back Taxes assessed		2.26
CONTRA.		
By *Delinquen* List personal property		$30.45
By *Delinquen* List Real estate		202.04
By 112 Railroad bonds, coupons cancelled		3360.00
By am't of interest paid on same		619.87
161 By Exchange on checks		3.36
By 5 per cent. commission on $3971.35		198.57
By Exonerations certified		6.99
By 2 per cent. commission on $368.56 R. R. Tax		7.27
By am't due this fund to balance		1117.86
	$5546.51	5546.51

John Adams, Sheriff, on Account of Bridge Fund.

To Levy on Realty	$3089.05	
To Levy on Personalty	1121.72	
To am't rec'd *fron* Auditor tax on Railroad	368.56	
To am't rec'd on redemption certified by Auditor	2498.00	
To am't from delinquent land sales	80.60	
To am't rec'd redemptions prior to such sale	51.64	
To am't rec'd from E. A. Berry Ex-Sheriff on this fund	500.00	
To back tax assessed	1.82	
CONTRA.		
By delinquent list personal property		$30.45
By delinquent list realty		202.04
By exonerations certified		6.26
By 2 drafts Nos. 32 & 94 and interest		2643.96
By 5 per cent. commission on $3972.08		198.60
By 2 per cent. commission on $368.58		7.37
By am't due this fund to balance		2149.69
	$5238.37	5238.37

John Adams, Sheriff, to Braxton County on Account of Sinking Fund.

To Levy on realty	$773.47	
To Levy on personalty	280.68	
162 To am't rec'd from *Auditor Raioroad* tax	92.14	
To am't of redemption certified by Auditor	12.49	
To am't rec'd from delinquent land sales.	40.30	
To am't rec'd on redemptions prior to such sale	25.82	
To back taxes	.71	
CONTRA.		
By delinquest list personal property		$7.12
By delinquent list real property		49.23
By exonerations certified		1.70
By 5 per cent. commission on $996.10		49.80
By 2 per cent. commission on $92.14 R. R. tax		1.84
By am't due this fund to balance		1115.92
	$1225.61	1225.61

* * * * * * *

Respectfully submitted,

E. S. BLAND,
W. E. HINES,
Commissioners.

STATE OF WEST VIRGINIA:

BRAXTON COUNTY COURT CLERK'S OFFICE.

I, C. K. Newlon, Clerk of said County Court do certify that the foregoing is a true copy of the Sheriff's settlement filed and recorded in my office, as to the County, Interest and Bridge and Sinking Funds it being a complete copy of said settlement, except as to the *Rood* Fund of the various districts.

Given under my hand this 17th day of April, 1902.

C. K. NEWLON, *Clerk.*

At a County Court held for the County of Braxton at the
163 Court house thereof, on Friday, October 4th, 1901:

Present Wm. J. Perrine, president, and David Evans and John I. Bender, commissioners.

It appearing to the Court that an order on the County treasurey Numbered 91 and dated January 6th, 1893, calling for the payment of $2184.97 to the American Bridge and Iron Company and by said Company endorsed to the First National Bank of Grafton with interest from January 7th, 1893, and amounting at this date to

$3332.07, is wholly unpaid; and it furthur appearing to the Court that said order is of a denomination so large as that the Sheriff cannot pay the same in any one year without injury to the public business, it is ordered that said draft make be taken up and cancelled, and drafts issued payable out of said fund in lieu thereof as follows:

Four drafts for the sum of $500.00 each: one draft for $187.97 and two drafts for the sum of $572.05 each, which last two drafts shall bear no interest and the said draft having been surrendered in open Court, it is ordered that said several drafts for said several sums be forthwith issued to the said The National Bank of Grafton, and delivered to it, or its attorney, Jake Fisher.

A copy.

C. K. NEWLON, *Clerk.*

No. 91. $2184.97.

BRAXTON COUNTY, W. VA., *January*, 1893.

The Sheriff will pay to Americane Bridge and Iron Company, or order the sum of Two Thousand One Hundred and Eighty-four dollars and ninety seven cents, after deducting therefrom the amount of all State, County, and other taxes and levies in his hands for collection against the said Bridge Company. For first payment on suspension Bridge at Sutton.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

Divided by order Court, Oct. 4, 1901.

164 STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

I, C. K. Newlon, Clerk of the County Court of Braxton County do certify that the foregoing is a true copy of the draft filed in my office except that the endorsements on the back of same are not copied.

Given under my hand this 17th day of April, 1902.

C. K. NEWLON, *Clerk.*

EXHIBIT "NEWLON No. 4."

Copies of Nine County Orders or Drafts.

No. 107. Payable out of Levy 1894. $453.35.
This claim draws interest from date.

BRAXTON COUNTY, W. VA., *March* 10, 1893.

The Sheriff will pay to the Variety Iron Works Co. or order, the sum of Four Hundred and Fifty-three dollars and twenty five cents, after deducting therefrom the amount of all State, County and other taxes and levies in his hands for collection against the said Company. For work on Burnsville Bridge.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 10, 1899, Paid.
July 10, 1899, Paid.

No. 106. Payable out of Levy of 1893. $453.25.
This claim draws interest from date.

BRAXTON COUNTY, W. VA., *March 10th*, 1893.

The Sheriff will pay to the Variety Iron Works Co. or order, the sum of Four Hundred and fifty-three dollars and twenty-five cents, after deducting therefrom the amount of all State, County and other taxes and levies in his hands for collection against the said Company. For work on Burnsville Bridge.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 10, 1899, Paid.
July 10, 1899, Paid.

No. 104. $1448.12.
165 This draft draws interest from date, and payable out of County levy of 1894.

BRAXTON COUNTY, W. VA., *March* 17, 1893.

The Sheriff will pay to American Bridge and Iron Company, or order, the sum of Fourteen hundred and Forty-eight dollars and twelve cents, after deducting therefrom the amount of all State, County, and other taxes and levies in his hands for collection against the said American Bridge Company, for part payment on Suspension Bridge.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

Rec'd this 10th day of July, 1899, of John Adams, S. B. C., $526.88 Five hundred twenty six and 88-100 dollars Int. is full on the within.

THE SUTTON BANK,
By PR.

July 10, 1897, Paid.

No. 105. With interest. $906.50.

BRAXTON COUNTY, W. VA., *March 30th*, 1893.

The Sheriff will pay to the Variety Iron Works Co. or order, the sum of Nine hundred & six dollars and fifty cents, after deducting therefrom the amount of all State, County and other taxes, and levies in his hands for collection against the said Company. For first payment on Burnsville Bridge.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 10, 1899, Paid.
July 10, 1899, Paid.

$815.00 With interest. No. 139.

BRAXTON COUNTY, W. VA., *August 16th*, 1893.

The Sheriff will pay to the Variety Iron Works Company, or order, the sum of Eight hun*f*red and Fifty dollars and — cents,

allowed by a special appropriation passed on the 6th day of July, 1893, after *deducti-n* therefrom the amount of all State, County, and other taxes and levies in his hands for collection against the said
The Variety Iron Works Co. For balance due on Bridge.
166 C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 10, 1899, Paid.
July 10, 1899, Paid.

No. 32, Payable out of County Fund, 1893. $1204.66.
To draw interest when work is completed.

BRAXTON COUNTY, W. VA., *November 1st*, 1892.

The Sheriff will pay to Mess-. Tully & Kelly, or order, the sum of Twelve hundred & four dollars and sixty-six cents, after deducting therefrom the amount of all State, County and other taxes and levies in his hands for collection against the said Tully & Kelly for building bridge at Burnsville.
C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July, 1898, Paid.
July, 1898, Paid.

No. 94. Payable out of levy 1893. $2178.32.

BRAXTON COUNTY, W. VA., *Feb. 13th*, 1893.

The Sheriff will pay to American Bridge and Iron Co. or order, the sum of Twenty one hundred & seventy-eight dollars and thirty-two cents, with six per cent. interest from date, after deducting therefrom the amount of all, State, County and other taxes and levies in his hands for collection against the said Bridge Company for third payment on Suspension Bridge.
C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July, 1898, Paid.
July, 1898, Paid.

No. 33. Payable out of County Fund, 1894. $1204.66.
To draw interest when work is completed.

BRAXTON COUNTY, W. VA., *Nov. 1st*, 1892.

The Sheriff will pay to Mess-. Tully & Kelly, or order, the sum of Twelve hundred and four dollars and sixty-six cents, after deducting
therefrom the amount of all State, County and other taxes
167 and levies in his hands for collection against the said Tully & Kelly. For building Bridge at Burnsville.
C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 9, Paid.

No. 108 Payable out of levy of 1893. $988.34.
This claim draws interest from date.

BRAXTON COUNTY, W. VA., *May* 10, 1893.

The Sheriff will pay to American Bridge and Iron Co. or order, the sum of Nine hundred and Eighty-eight dollars and thirty-four cents, after deducting therefrom the amount of all State, County and other taxes and levies in his hands for collection against the said bridge Company. For part payment on Suspension Bridge.

C. K. NEWLON, *Clerk.* J. B. NORMAN, *President.*

July 9, Paid.

STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

I, C. K. Newlon, Clerk of the County Court of Braxton County, do certify that the foregoing are true copies of drafts filed with the Sheriff's settlements in my office except that the endorsement on the backs of same are not copied.

Given under my hand this 17th day of April, 1902.

C. K. NEWLON, *Clerk.*

Office of Linn, Byrne & Hines,

SUTTON, WEST VIRGINIA, *March 28th,* 1902.

Depositions of witnesses, taken on behalf of James V. Tully by C. H. Bland, Notary Public for Braxton County, West Virginia, to be read as evidence on behalf of said Tully in the Chancery cause of A. T. Taylor against James V. Tully and others pending in the Circuit Court of Braxton County, West Virginia.

Present said James V. Tully in person and by Linn, Byrne
168 & Hines, his attorneys, and also Fred L. Fox, one of his attorneys, and the plaintiff by B. P. Hall as his attorney, the said plaintiff appearing and waiving formal notice of the taking of these depositions.

And WM. J. PERRINE, a witness of lawful age, introduced by the defendant Tully, being first duly sworn, upon his oath deposes and says:

By R. G. LINN, Esq.:

Q. 1. State your age, residence and occupation.

A. Age, 67; residence, Cutlips, Braxton County, and occupation, farmer.

Q. 2. Are you a member of the County Court of Braxton County, and if so, how long have you been?

A. Yes, I have been a member of the County Court 11 year- last January.

Q. 3. State whether you participated in the action of the Court in awarding to James V. Tully the contracts made with him for the building of abutments for the bridges across Old Womans Run,

ames Run, Taylors Run, Oil Creek at Burnsville and Oil Creek Confluence?

A. Yes, sir.

Q. 4. State whether or not before making said contracts with id Tully the Court caused an investigation to be made by L. H. elly, Prosecuting Attorney of the County, and received from him report of the financial condition of the County?

A. Yes, sir.

Q. 6. State what that report was?

Obj. Plaintiff, by counsel, objects to this question because it is mmaterial.

A. I don't know that I could state exactly what it was, but there as several thousand dollars, I don't mind the amount, that could e applied on th's contract.

Q. 6. State whether or not you have any knowledge of stone asonry, and the extent thereof?

A. Well, I think I know *somthing* about stone masonry, I worked at it twenty-five years.

69 Q. 7. State whether or not in your opinion the price contracted to be paid defendant Tully was reasonable and fair?

A. I consider it was according to the work he done, and the nconvenience of setting the rock and all.

Q. 8. State whether or not public notice was given of the letting f the contract for the building of the abutments to the bridge across he little Kanawha River at Burnsville?

Obj. *Objacted* to, because immaterial.

A. There was and it was advertised, and several bids were made, don't mind the amount.

Q. 9. State about when that was?

A. It was sometime before these contracts here.

Q. 10. Was it since you have been a member of the Court?

A. Yes, sir.

Q. 11. State whether or not the cost of material and labor at that ime was less than at the time of the letting of the contracts *refered* o defendant Tully?

A. Yes, sir, they w[illegible] a good deal cheaper and everything was heaper.

Q. 12. State how the price of that contract compared with the rice contracted to be paid to defendant Tully?

A. Well, I would think, taking everything into consideration, hat the contracts for the building the abutments across the Little Kanawha River was as high as these was here.

Q. 13. For the purpose of refreshing your *reccollection* I will ask ou if the price was not the same per cubic yard?

A. I don't mind certain, I believe it was *somthing* near it.

Q. 14. State whether or not the action of the Court so far as ou were concerned, and so far as the other members of the Court vere concerned, as you may know, in letting said contracts to said Tully was in good faith toward him and toward the people of Braxton County?

A. It was.

Q. 15. State whether or not in your opinion the bridges provided for by the Court in its contracts with said Tully and The Canton Bridge Company were of great public necessity?

170 A. Yes, sir, I do. The roads was *impassible* without them.

Q. 16. State whether or not there had long been a general demand on the part of the citizens and taxpayers of the County for the erection of these bridges?

Obj. Plaintiff, by counsel, objects to this question and the *preceeding* answer, because immaterial.

A. Yes, sir, there had been. There was petitions handed in to the County Court to build them.

Q. 17. State if you know whether or not the plaintiff, A. T. Taylor, participated in these demands?

A. I know he was when these bridges down the river here at Taylors Run and Frames Run he asked to have them bridges built.

Q. 18. State in what way his pecuniary interest would be affected by building of the bridges as they were built across Taylor and Frames Run?

A. It certainly would be to his interest, because he has valuable land there, and his only road to get to Sutton, the County seat.

Q. 19. How far does he live from Sutton?

A. About three miles.

Q. 20. How far from the Taylor and Frame Run Bridges, respectively?

A. It ain't more than 400 yard- to the Taylor Run bridge, and a little *furthur* to the Frame Run bridge.

Q. 21. Does he not visit Sutton frequently?

A. Yes, sir, very frequently.

Q. 22. How long has that been his habit?

A. Ever since he was a boy, I reckon, for years, I don't know how long.

Q. 23. State as nearly as you can how soon after the letting of the contract to defendant Tully for the building of the abutments to the bridges across Old Womans Run, Frames Run, Taylors Run, and Oil Creek at Burnsville, the plaintiff, A. T. Taylor, knew of the same?

Obj. Plaintiff, by counsel, objects to this question be-
171 cause immaterial, and excepts to the questions and answers of this witness in regard to the plaintiff joining in the demand for the building of these bridges and as to whether or not the bridges would benefit the plaintiff because immaterial.

A. He knew it all the time, I think. He was very well pleased with the contracting of the bridges across Taylors Run and Frames Run. He spoke to me about it right away after the contracts was let down there and was well pleased with them.

Q. 24. State if you know how soon after the letting of the first contract to him defendant Tully commenced work there under and where?

A. I don't *reccollect* how long, it wasn't very long I don't think; as to the time I couldn't tell. He commenced them bridges down there first, at Taylors and Frames Run.

Q. 25. State if you remember whether or not you had any conversation with the plaintiff about the work of said Tully on the Frame and Taylors Run abutments while it was in progress?

A. Yes, sir; Taylor and me talked about it. He said that all the objections he had the stone work might have been done cheaper. He said the stone work might be done with loose rock, just gathered up, what we call flag wall. I objected to it and told him that there was no wall of that kind fit to set a bridge on. I also called his attention to the same kind of walls built under little wooded structures that they had there for years, and every freshet that came, or nearly every freshet, they had to be repaired.

Q. 26. State if you know whether or not the building of these abutments and bridges was a matter of general knowledge and comment throughout the County and among the citizens and taxpayers of the County, while the work was in progress?

A. I certainly think it was. It was talked of a great deal
172 while the work was going on and there never was any objections to me.

Q. 27. State whether or not this work and also the bridges at Confluence was completed before the 18th of October last?

A. I think they was.

Q. 28. State whether or not from the knowledge you *possesed* at the time these contracts were awarded to defendant Tully you understood and *belived* that the Court had means at his command available for the purpose wherewith to provide for the payment of the work so contracted?

Obj. Plaintiff, by counsel, objects to this question because it is immaterial.

A. Yes, sir, that was my understanding that we had.

Q. 29. State if you remember whether or not Ira H. Greathouse was appointed a committee to let the contract for the building of the abutments to the bridge ot Confluence?

A. Yes, sir; he was.

Q. 30. State whether or not he reported his action to the Court and whether or not such action was approved by the Court?

A. Yes, sir; he made his report and it was approved.

Q. 31. State if you know why an order was not entered showing the receipt of such report and its approval?

A. I don't know that I can. It must have been an oversight or something, I couldn't tell why exactly it wasn't That was the calculation; it was approved by the Court.

Q. 32. If no such order was entered was it withheld from the record by any design on the part of the Court?

A. It was not.

Q. 33. Do you mean to say that the order was directed to be entered?

A. I don't know whether the Court just ordered it to be entered,

or not, but it was always the rule that when the Court passed on anything the Clerk entered it. It was supposed to be *enterd.*

173 Q. 34. When was this contract let?

A. Well, I couldn't state the date now; I expect it was in 1900.

Q. 35. State whether or not the abutments of the bridge at Confluence were to be built by said Tully at the same price as the others, or at a greater or less price?

A. I am not sure about that now.

Q. 36. State if you remember whether or not the plaintiff Taylor was present when the abutments to the Taylor and Frames Run bridges were accepted by the Court?

Obj. Plaintiff, by counsel, objects to this question because immaterial.

A. Yes, he was.

Q. 37. State when that was?

A. I don't *reccollect* the date of it now.

Cross-examination.

By B. P. HALL, Esq.:

Q. 1. Was the report of Greathouse as to the Confluence bridge verbal or in writing?

A. I ain't sure about that. I know he reported, and we accepted his report.

Q. Sometimes that was done, and sometimes we just passed upon the question it was the rule to have an order drawn and then the Court passed upon the matter and either directed that it be entered, or that it was rejected, wasn't it?

A. Sometimes that was done, and sometimes we just passed upon a thing and handed it to the Clerk. Sometimes he was at the desk and took a note of what we done and put it on the order book later.

Q. 3. Do you think the Court or Mr. Tully would have depended on the Clerk to draft the order as to a matter of this kind?

A. I wouldn't know why they wouldn't, they didn't seem to be any objections anyway to it, and it was supposed to be all right.

Q. 4. Didn't Mr. Tully have counsel to draft all the orders as to the other matters about the construction of bridges, and

174 didn't the Court, before passing upon the matter, have the orders or drafts of the orders inspected by the Prosecuting Attorney, didn't they do this as a rule?

A. I don't mind who drafted the orders, I suppose it was the Prosecuting Attorney. I nearly always called on him to do such things.

Q. 5. In question 24 you are asked how soon after the making of the order of October 5th, 1899, Tully begun work; is it not a fact that under an *araingement* with members of the Court he actually begun work before that order was entered?

A. Well, I don't recollect anything about the dates of it. I haven't charged my memory with any thing of the kind. I suppose the records will show, is the reason that I didn't.

Q. 6. But is it not a fact that before the term of Court at which the order of October 5th, 1899, was entered there was a definite agreement or understanding between Tully and members of the Court that he was to have the contract, and is it not a fact that he begun work before that term of court?

A. Not to my knowledge there wasn't.

Q. 7. You have stated that at the time you entered into the contracts with the Canton Bridge Company and J. V. Tully for the construction of the bridges, you thought you had funds *suficient* to pay for the work; it turned out, however, that you had not, didn't it?

A. I thought we had funds to pay a good deal on the work, to pay the majority of it, and calculated that before the work was completed we would have enough to pay it all.

Q. 8. But it turned out that you did not have funds in 1899 to pay for the construction of these bridges, didn't it?

A. That was owing to the failure of our old Sheriff?

Q. 9. You didn't have funds if he had not failed did you?

A. Why, we would have had very nearly funds.

Q. 10. According to the terms of the contract between the County Court and the Canton Bridge Company, the bridges across Taylors Run, across Frames Run, across Old Womans Run, the bridge across Oil Creek at Burnsville and the bridge across Oil Creek at Confluence was to be completed by the 10 day of December, 1899, were they not?

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A. I don't *reccollect* certain when. It was considered by the Court that Lewis County paid half of the Confluence bridge; that was an understanding from counsel that this Court held.

Q. 11. As to the other four bridges they were to be completed by December 10, 1899, were they not, the order so provides, does it not?

A. That's what that order says. (*Refering* to a copy of the order handed him.) I don't remember anything about the time now.

(For order see page 8 of transcript.)

Q. 12. The Canton Bridge Company could not even commence to construct the bridges until the abutments were made, could they?

A. No, sir.

Q. 13. At the time of entering into the contracts between the County Court and the Canton Bridge Company and J. V. Tully, the County Court had had constructed bridges across the Little Kanawha at Burnsville, across Elk River at Sutton, across Grannie's Creek and across Sugar Creek and *ther* were drafts outstanding unpaid at that time, for the construction of said bridges, wasn't there, or some of them?

Obj. To this question and any answer to be given thereto the defendant Tully objects.

A. I suppose that there was a part of them that was unpaid; we made calculations, or had it made by the Prosecuting Attorney, that we had a levy *suficient* to pay that and several thousand dollars over.

Plaintiff, by counsel, excepts to that part of the answer in which the witness states as to what was shown by the investigation of the Prosecuting Attorney.

Q. 14. There has been no bridges constructed in Braxton County by the County Court during the years 1899, 1900, 1901 and 1902 except the bridges constructed under contract with Tully and the Canton Bridge Company, has there?

A. No.

176 And *furthur* this deponent saith not.

WM. J. PERRINE.

1 d 11 mi.

DAVID EVANS, a witness of lawful age, introduced in behalf of defendant Tully, after being first duly sworn, upon his oath deposes and says:

By R. G. LINN, Esq.:

Q. 1. State your age, residence and occupation.

A. Age 53 years; residence, Frametown, Braxton County, and occupation I farm, lumber and trade, lumbering the most of the time.

Q. 2. Are you a member of the County Court of Braxton County, if so how long have you been?

A. I am, and have been since January 1899.

Q. 3. Were you present and acting as a member of the Court at the time the contract was awarded to defendant Tully for the building of the abutments to the bridges across Old Womans Run, Frames Run, Taylors Run and Oil Creek at Burnsville?

A. Yes, sir.

Q. 4. What investigation did the Court make and what report if any did it receive touching the financial condition of the County at that time?

Obj. Objected — by plaintiff because immaterial.

A. Well, as to myself, I didn't make any investigation, but Mr. Kelly and Mr. Greathouse as President of the Court at that time had made investigations and they reported that we was able to build those bridges, and would have money enough when the money was collected from Mr. Berry on Bridge fund with a levy of 1899.

Q. 5. Was Berry the ex-sheriff, and was the money due from him in that capacity?

A. He was the ex-sheriff and it was my *understandin* that the money was due from him.

Q. 6. What amount was due from said ex-sheriff available for the purpose of application on the Tully contract?

A. About $8000.00 at that time.

177 Q. 7. State how Tully was to be paid?

Obj. Plaintiff, by counsel, objects to this question because the order of the County Court, the contract between the Court and Tully is the best evidence.

A. My understanding at that time he was to be paid out of the levy of 1899.

Q. 8. State whether or not it was agreed by said Tully or there was any understanding between him and the Court that he should be paid in part for said four abutments out of the levy of 1900?

Obj. Plaintiff, by counsel, objects to this question because the order aforesaid, the contract is the best evidence.

A. Well, I don't *reccollect* about that. I think that he said that if there wasn't money enough of 1899 that he could wait until the money was collected from Mr. Berry, what was due the County on the bridge fund. We didn't know then when we could get all that money and it is not all collected yet.

Q. 9. How long have you been a citizen of Braxton County?

A. 50 years; I lived in Nicholas County three years.

Q. 10. What road do you travel to get from your house to the County seat?

A. The Elk River road from Frametown.

Q. 11. Do you cross the bridges over Taylor and Frames Run in coming here?

A. Yes, sir.

Q. 12. State whether or not many citizens of the County have to cross those bridges in coming to and returning from the County seat?

A. Yes sir, there is a great many.

Q. 13. How is it with the bridge over Old Woman's Run?

A. Well, I don't know much about that one.

Q. 14. State whether or not there was any great public demand from the citizens of Braxton for the erection of the four bridges the abutments of which are *refered* to?

Obj. Objected to by plaintiff, because immaterial.

A. There was.

Q. 15. State whether or not you as a member of the Court
178 considered that it was necessary and important and indispensible to the public interest of the County that these bridges should be built?

Obj. Objected to by plaintiff because immaterial.

A. I did.

Q. 16. Do you know the plaintiff A. T. Taylor, and if so how long have you known him?

A. I do know him, I have known him for 30 years.

Q. 17. State where he lives with reference to Frame and Taylor's Run bridges?

A. Well, he makes his home right there close — the Taylor Run bridge. He owns real-estate right there.

Q. 18. State if you know whether or not he was one of the citizens of the County who was clamoring for the building of the bridges *refered* to?

Obj. Objected to by plaintiff because immaterial.

A. Well, I don't just *reccollect.* I know he saw the bridges while they were building and while the work was going on, I expect, more than any other citizen of the County. I mean those two bridges, Taylor Run and Frame Run bridges.

Q. 19. State whether or not you were present and acting as a member of the Court when Ira H. Greathouse reported (if he made such report) that he had let the contract to defendant Tully for the erection of the abutments to the bridge at Confluence?

A. I was. I don't think that he filed any report in writing; to the best of my *reccollection* he just made a verbal report.

Q. 20. At what price did he report the contracts to be let?

A. At the same price I think that the other abutments were contracted at.

Q. 21. What action did the Court take on his report?

A. The Court agreed to confirm the contract.

Q. 22. State whether or not an order to that effect was directed to be entered?

Obj. Plaintiff by counsel *by counsel,* objects to this question *question* and answer because the court must speak by its record.

179 A. I don't *reccollect,* but I think there was.

Q. 23. If the record discloses no such order will you state whether or not it was withheld from the record through any design on your part or on the part of the other members of the Court so far as you know?

A. It was not.

Q. 24. State whether or not the price agreed to be paid to the defendant Tully for the five abutments *refered* to, was, in your opinion, when so acting as a member of the Court, fair and reasonable?

A. It was reasonable for the kind of work. We could have got cheaper work done at cheaper prices, but the Court decided that what work we done, that we would do good work that we had already expended money enough on patchwork to have good bridges built.

Q. 25. State whether or not you as a member of the Court, and the Court so far as you know acted in good faith toward defendant Tully and toward the people of the County of Braxton in entering into said contracts, and whether or not there was any intention so far as you know, to violate or evade the law?

A. I acted in good faith, and I think the *ballance* of the Court did. There was no intention on my part and I don't think there was on the other members of the Court to violate the law.

Q. 26. State whether or not all five of the bridges *refered* to had been completed and accepted by the Court before the 18th of October last?

A. I don't *reccolect whaen* the Confluence bridge was accepted; in fact I wasn't there; I didn't go with the other members of the Court to accept the Confluence bridge. Mr. Bender and Mr. Perrine went and accepted the bridge and I don't *reccollect* what time it was the others was accepted before that time.

Q. 27. State whether or not the plaintiff Taylor was present when

the Taylor Run and Frame Run abutments were accepted by the Court.

Obj. Objected to by plaintiff because immaterial.

A. I don't *reccollect.*

180 Q. 27. State if you remember when the contract for the abutments to the bridge at Confluence was awarded?

A. I don't just *reccollect* when that contract was awarded. It was awarded some time, though, in 1900.

Cross-examination.

By B. P. HALL, Esq.:

Q. 1. You speak of an investigation being made showing about $8000.00 available for the payment of the construction of the bridges mentioned and *furthur* along in your deposition you speak of this amount as being due from ex-sheriff Berry; now isn't it a fact that your investigation and the amount ascertained included not only what was due from Berry, but also from John Adams, Sheriff?

A. Well, I didn't make the investigation, as I have said before, but it was reported that way to Court, was my answer before.

Q. 2. As I understand you then, it was reported that there was $8000.00 from all sources applicable to the construction of bridges or to the payment of indebtedness for the construction of bridges; is that correct?

A. My understanding was that there was $8000.00 due from ex-sheriff Berry.

Q. 3. You didn't know, and don't know now whether that is true?

A. I didn't know at that time, but I think if I *reccollect* right there has been something near $6000.00 paid in since, by sheriff Berry; I looked over the last settlement, and I forget just how it stood.

Q. 4. You don't know yourself what amount was found due from Berry or the amount he has paid over do you?

A. I don't *reccollect.*

Q. 5. At the *the* time of making the contract with the Canton Bridge Company and Tully, the County owed for the construction of the bridge across the Elk River at Sutton, for the bridge across the Little Kanawha at Burnsville, for the bridge across Grannies Creek,

181 and for the bridge across Sugar Creek, or at least it owed a part of the cost of the construction of said bridges or some of them didn't it?

A. About $850.00 was my understanding then.

Q. 6. There were no bridges constructed by the County Court in the years 1899, 1900, 1901 or 1902 except those constructed under contract with the Canton Bridge Company and J. V. Tully, was there?

A. No County bridges.

Q. 7. Well, there were no bridges constructed by the County Court during those years exccept the ones above named?

A. That's all that I know of. I built one little bridge there at

Frametown, which was built and paid for out of the road fund of Birch District.

And *furthur* this deponent saith not.

DAVID EVANS.

1 d 16 mi.

JOHN A. GROSE, a witness of lawful age, introduced in behalf of defendant Tully, after being duly sworn, on his oath deposes and says as follows:

By R. G. LINN, Esq.:

Q. 1. State your age, residence and *ocupation?*

A. Age 37 years, residence, Sutton, W. Va., and occupation, a printer.

Q. 2. State what connection if any, you had with the Braxton Democrat in the years 1899 and 1900 and 1901?

A. I was proprietor and manager.

Q. 3. State whether or not it is a weekly newspaper published in the town of Sutton, Braxton County, West Virginia?

A. It is.

Q. 4. Please take from your file copies of said paper issued weekly so far as they contain references to the bridges or abutments to bridges or contracts relating to the same over Old Woman's Run, Frame and Taylor Runs, Oil Creek at Burnsville and Oil Creek at Confluence, and after giving the date of each item, read the items in said paper as published from time to time, beginning with the issue of July 20th 1899, and ending with the year 1901.

182 A. From the paper of July 20th 1899, I read the following: "In putting the Court proceedings in type last week, the compositor made a mistake of $12790.00 in the aggregate amount to be paid for the five bridges for which the Court contracted with the Canton Bridge Company. The mistake has no doubt been the source of much unfavorable comment, and we hope our readers will remove the false impression left with those who may not see this correction. Instead of contracting for bridges at the exorbitant price which the compositor made us report, the Court contracted for bridges at the following places at the very reasonable figures given; across Oil Creek at Confluence, at the price of $1125.00; across Oil Creek at Burnsville, at the price of $575.00; across Taylor's Run at the Sugar Grove at the price of $420.00; across Frames Run on the Elk River road, near Sugar Grove at the price of $315.00 and across Old Woman's Run at Sutton at the price of $1500.00. We very much regret that the mistake was made, and hope that this explanation will suffice to set the Court right before the people."

In the issue of October 12th, 1899, the following item appeared in the Court proceedings. "J. V. Tully awarded the contract for building abutments to bridges now in course of construction."

In the issue of November 23rd, 1899, the following local appears: "J. V. Tully has completed the stone work for the bridges between Sutton and Bealls Mills and the bridges are now being placed in

position. Work on the abutments of the bridge across Old Woman's Run will be commenced at once."

In the issue of January 11th, 1900, the following item appeared in the County Court proceedings: "Contract for building abutments for bridge to be erected over Old Woman's Run let to J. V. Tully."

In the issue of April 19, 1900, the following item appeared in the locals: "The stone work for the bridges across Old Woman's Run is practically completed and the gentlemen who are to put up the iron arrived yesterday."

In the issue of May 17th, 1900, the following item appeared among the locals: "Harry Meridith of Marietta, Ohio, is here superintending the placing of the iron across the bridge at Old Woman's Run. He is a genial young man, and rock ribbed Democrat."

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In the issue of May 31st 1900, the following item appeared among the locals: "The County Court met Tuesday of this week and received the iron on bridge across Old Womans Run."

"Harry Meridith, who superintended the construction of the bridge across Old Womans Run, left yesterday for his home in Marietta, Ohio."

In the issue of July 12, 1900, the following appears *amoung* the Court proceedings: "Stone work of bridge at mouth of Oil Creek received from contractor J. V. Tully and claims aggregating $2689.52 allowed in payment."

In the issue of August 9, 1900, the following item appeared among the personals: "J. V. Tully the contractor, was here from Addison Wednesday."

In the issue of January 17, 1901, the following item appeared among the Court proceedings: "J. V. Tully allowed $700.00 for making fills at Burnsville bridge and $800.00 for part work on abutments for bridges at Confluence."

Q. 5. State the circulation of said newspaper for the year 1899 and 1900 and 1901."

A. From 1100 to 1300 copies.

Q. 6. What proportion of that number issued to citizens of Braxton County?

A. More than three-fourths.

Q. 7. State whether the circulation of said paper is general throughout the Country?

A. It is. Some copies went to every post office in the County.

Q. 8. State whether or not you are acquainted with the plaintiff A. T. Taylor, and if so whether he is a subscriber to the said newspaper?

A. I am acquainted with Mr. Taylor, and he is a subscriber to the Braxton Democrat.

Q. 9. How long has he been taking it?

A. About four years.

Q. 10. State whether or not he is the owner of any real estate in this County, and if so how much and where?

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A. I think he is the owner of about 400 acres of land on Elk River near the Taylor and Frame Run bridges.

Obj. Plaintiff by counsel objects to the foregoing deposition because immaterial.

JNO. A. GROSE.

1 da.

It growing late the *furthur* taking of these depositions is ad-*adjourned* till tomorrow at the same place and between the same hours.

Given under my hand this the 28th day of March, 1902.

C. H. BLAND, *Notary.*

March 29th, 1902.

The *furthur* taking of these depositions is resumed pursuant to adjournment of yesterday, Present, same parties.

JAMES V. TULLY, a witness of lawful age, introduced in his own behalf, being first duly sworn, deposes and says as follows:

By R. G. LINN, Esq.:

Q. 1. State your age, residence and occupation?

A. Age, 32, residence, Sutton, and occupation, contractor.

Q. 2. Are you one of the defendants in this suit?

A. Yes, sir.

Q. 3. State what was the agreement and understanding between you and the County Court of Braxton County in *referenct* to the funds that were to pay you for the building of the abutments to the bridges across Old Womans Run, Frames Run, Taylors Run and Oil Creek at Burnsville?

A. On the 5th day of October, 1899, I contracted with the County Court of Braxton County to build aforesaid bridges, and was to be paid out of the levy of 1899. The Court also stated that there was a fund of $8000.00 available at that time from ex-Sheriff Berry and the then present Sheriff Adams, prior to the levy of 1889.

Q. 4. Did you see the *orded* that was entered at the term
185 in regard to your contract before the adjournment of the Court or not?

A. No, sir, I didn't.

Q. 5. After the adjournment of the term state whether or not you discovered that the order had been entered showing that the work was to be paid for out of the levies of 1899 and 1900 and if so, what action if any did you take, if any, to secure a correction of the said order to conform to the contract as made with you?

A. I did not see the order until after the Court had adjourned. When I discovered it, Mr. Linn, my attorney was here at November term of Court, and I got to talking to him about it asked his advice, and he told me that if it was a mistake or error in the Court or Clerk that if I could get another reentered at the next term of County Court that he was satisfied that the Court would do it if it was through mistake that the first one — made. So I got the order entered making the four abutments payable out of the levy of 1899.

Q. 6. State whether or not the order as entered at the January term, 1900, is in accordance with the true agreement and understanding as originally made and had between you and the Court at the time your contract was made with them for the erection of the said four abutments?

A. Yes sir, it is.

Q. 7. How did it happen that you did not see the order of the 5th of October, 1899, until after the adjournment of the Court?

A. Well, the two bridges, one across Taylors Run and one across Frames Run was condemned and they wanted to get up new ones as soon as possible and they told me that they would award me the contract if I could start to work at once. My tools, men and outfit was at West Union, Doddridge County, W. Va., and I told them that just as soon as I could get them shipped here I would start to work. As soon as the contract was awarded me I left and went after my tools before the Court had adjourned and the Court had adjourned before I returned. I started the work on the 16th day of October, 1899, and finished up Taylors Run and Frames Run bridges the day before Thanksgiving, 1899.

Q. 8. Are you acquainted with the plaintiff, A. T. Taylor?

186 A. Yes, sir, I am.

Q. 9. State whether or not he knew of the work undertaken by you under said contract and the abutments that you had undertaken to build and whether or not he was present while any of said work was in progress?

A. Yes, sir, I think that Mr. Taylor seen the first stone that was set on the Taylor Run bridge, and that he was there every day, nearly every day, while the work was going on at the Taylor Run and Frame Run bridges; that he used to come around there and set around so much and so long at a time that the boys that was working for me on the bridge used to call him the inspector whenever they seen him coming.

Plaintiff by counsel objects to the foregoing question and answer because immaterial.

Q. 10. State when the work was completed under said contract, and which of the said four abutments was last completed?

A. The abutments at *Burnsvill* across Oil Creek was the last that was completed on the 25th day of June, 1900.

Q. 11. State when and with *whome* the contract for the erection of the abutments to the bridge at Confluence was made and what was the *cotract?*

A. At the July term of Court, 1900, Ira H. Greathouse, then President of the County Court was appointed a commissioner by the Court to let the abutments at Confluence to contract. I was working at Addison, Webster County, and he wrote me, if I ain't mistaken that he was going to let the abutments on the 9th day of August, 1900, and I came here and was awarded the contract at the same price per cubic yard and excavation and timber as I got for the other four abutments that I had built in 1899 and 1900.

Q. 12. When was the work on the bridge at Confluence completed by you?

A. I don't know just the date of it, but it was on Saturday before the 4th of July, 1901.

Q. 13. State whether or not that was before the institution of this suit and if so how long?

A. Yes sir, it was before the institution of this suit, and I
187 don't remember, but I think it was on the 18th day of October, 1901, that I got notice of the injunction being brought by A. T. Taylor.

Q. 14. State whether or not before the institution of this suit you had assigned for a valuable consideration any of the orders issued to you for work on said abutments to any person or *corperation* and if so to *whome* and the amount so assigned?

A. Yes, sir, I had assigned all the orders that I had received away for a valuable consideration; I don't believe I remember the amounts or to who all I did assign them to. I think that Joe Fucey got $3000.00 or upwards; Frank H. Kidd $1833.00; The National Exchange Bank of Weston $1500.00 at one time and I believe about the same amount at another, and there is or was several other orders that I have traded to different parties and they had before this suit was brought trade- or sold them to other parties and I don't know now whose hands they are in. I understand that Miss Ella Rudkin holds $100.00 order and B. F. Fisher holds $100.00 order that I had traded to other parties. I traded the orders to mostly anybody to pay my debts and part of them to Ruhl Koblegard & Co. for cement that I used in the building of the abutments.

Q. 15. State whether or not you ever got back either before or since the institution of this suit any of the orders thus assigned by you?

A. No, sir, I never did. I put up $1500.00 in the National Bank at Weston for *collatteral* security, and they notified me that my notes was due and that I have it to pay at once.

Q. 16. State whether or not the prices contracted to be paid you for the several abutments aforesaid were fair and reasonable?

A. In 1892 the County Court of Braxton County advertised for bids for the building of abutments and piers across the Little Kanawha River at Burnsville, and that they *wauld* let the same to the lowest responsible bidder on the 10th day of August, 1892. *They* was three or four competitive bidders; I was at that time one of the firm of Tully & Kelly and we were the lowest bidder and were awarded the work at the following prices: the masonry per cubic yard $7.45; the excavation $1.00 per cubic yard; and the
188 timber $23.00 per thousand; M. H. Sullivan and Fuccy was partners at that time and *there* bid on the same work was $8.50 per cubic yard. Blodgett & Milligan who were contractors at that time, *there* bid was $9.00 per cubic yard; so we being $1.05, Tully & Kelly, lower than the next lower lowest bid, we were awarded the contract at the price stated. I told the County Court on the 5th day of October, 1899, that I would do the same

class of work on the Taylor Run abutments, Frames Run, Old Womans Run, and the abutments across Oil Creek at Burnsville for the same price per cubic yard and for excavation and timber as *as* I got for the Burnsville across the Little Kanawha River in 1892. And at the same time that bridge was being built Sullivan & Fuccy had the contract of building abutments and piers across the Little Kanawha River 16 miles below there at Glenville, Gilmer County, West Virginia, for $8.50 per cubic yard for the same kind of work, and at that time labor and material was a great deal cheaper than in 1899 when I built those bridges in Braxton County.

Obj. Plaintiff by counsel, objects to the foregoing question and answer because immaterial.

Q. State if you know how the prices contracted for by you for the said five abutments compare with work of a like kind in surrounding Counties?

A. Well, last year, in 1901, they advertised for bids and let to contract at Weston, Lewis County, the contract for building abutments across Polk Creek in the town of Weston; it was built on a rock foundation there and had to be no excavation or timber used, and the contract price was $7.43 per cubic yard for the masonry, and his was dry work, no cement used and a great deal cheaper class of work than what I done in Braxton County. In another adjoining County to Braxton there was let the contract on the 20th of January, 1902, at Clay Court House Clay County, abutments and piers across Elk River at the mouth of Big Otter where there wouldn't have to be no timbers used at the following price: $7.90 per cubic yard for masonry, and $1.00 per cubic yard excavation, there being some six or seven competitive bids received for that work. In another adjoining County to Braxton, Nicholas County, the contract was let on the 27th day of October,
189 1901 to myself to build abutments and piers across Gauley River Nicholas County, at the Hughes Ferry there being no excavation nor timber used for the price of $7.50 per cubic yard.

Q. 18. State out of what levy or funds it was agreed and understood you should be paid for the abutments to the bridge at Confluence?

A. When I first took the first contract for the four abutments, I wanted the contract for all five of them at the same time, but they told me they didn't have money enough to pay for the five, available at that time, and that I wouldn't have the four built until sometime in the summer of 1900 and at the levy term 1900, that they would raise the levy *suficient* to pay for the abutments at Confluence; that was my understanding with the Court; that I was to be paid out of the levy of 1900 for the abutments of the bridge at Confluence.

Q. 19. State whether or not Plaintiff Taylor was present when the County Court accepted the abutments to the Taylors Run and Frames Run bridges?

A. Yes sir, I think he was.

Q. 20. State whether or not the said Taylor was present at any

time when the work on the Old Womans Run abutments was in progress?

A. Yes, sir, I have seen him there and passing by there some two or three times.

Obj. Plaintiff by counsel, excepts to question- 3, 4, 5, and 6, and the answers thereto because the orders of the County Court is the best evidence as to the contract, and because the answers contradict the contract as shown by said orders.

Cross-examination.

By Mr. HALL:

Q. 1. Didn't you have counsel representing you in regard to the order of October 5, 1899?

A. Well, no I can't say that I did. Mr. Dulin was in there and got up and told the Court that anything that they would do that he was a citizen and that anything that he Court would do to
190 have it done in a good and substantial order and not have any more trouble like there had been about those bridges at Taylors and Frames Run, that they had to have them repaired every year.

Q. 2. Is it not a fact that the order of October 5, 1899, was drafted or prepared by an attorney acting for you?

A. No, sir, I don't think it was.

Q. 3. Who was your attorney as to this matter?

A. I didn't have any.

Q. 4. Do you know who did prepare *ar* draft the order of October 5, 1899?

A. The *Prossecuting* Attorney.

Q. 5. At whose instance did he prepare the order?

A. The County Court and mine together.

Redirect.

By Mr. LINN:

Q. 1. How do you know that the Prosecuting Attorney prepared that order?

A. Well, the Prosecuting Attorney, the Court and myself and there was lots of other people in the Court room, several there, and we talked the matter over, and they told him to prepare the order and that if I wanted to leave on the evening train every thing would be fixed up all right, the contract was awarded to me, that everything would be fixed up all right, and for me to get started to work as quick as I could.

Q. 2. Then you only know that he was directed by the Court to write the order and not that he in fact did write it?

A. No, sir, I didn't see him write it; I didn't see him write it and don't know that he did. He was directed by the Court to write it. I had left before the Court adjourned and the Court had adjourned before I came back.

Recross.

By Mr. HALL:

Q. 1. The Prosecuting Attorney was present during the
191 time the matter of letting the contract to you was under discussion between you and the Court, was he not?

A. I don't know whether he was there all the time or not; he was there part of the time.

Q. 2. Were you present when the order entered in January 1900 was entered?

A. No, sir, I wasn't.

Q. 3. Were you present when the matter of entering that order was discussed with the County Court?

A. No, sir. At that time I was in Kentucky visiting my sister.

Q. 4. Who represented you in the entering of that order?

A. Linn, Byrne & Hines.

And further this deponent saith not.

J. V. TULLY.

JAMES H. DUNN, a witness of lawful age in behalf of defendant Tully, being first duly sworn upon his oath deposes and says as follows:

By R. G. LINN, Esq.:

Q. 1. State your age, residence and occupation?

A. Age 42; residence, Sutton, West Virginia, and occupation publisher.

Q. 2. State whether or not you are the editor and publisher of a weekly newspaper known as the Braxton Central, and if so how long have you been such editor and publisher?

A. I am and have been editor and publisher *sine* August, 1884, I think.

Q. State where it is published, and how often?

A. Published in Sutton on Friday of each week.

Q. 4. Please take from your file, and after giving the date of the issue read from each issuue any article or paragraph making reference in any way to the building of the abutments to and bridges over Old Woman's Run, Frames Run, Taylors Run and Oil Creek at Burnsville and Confluence, beginning with the issue of October 13th, 1899.

192 A. In County Court proceedings published on that date I find the following: "Contract for building abutments to the four bridges to be built in this County awarded to J. V. Tully at the price of $7.45 per cubic yard for stone work and $1.00 per square yard for excavation and $20.00 per thousand feet for lumber."

In the issue of October 27, 1899, the following local appears: "Work on the bridge at the head of Main street has been commenced by the contractor, Mr. Tully."

In the issue of November 24, 1899, the following local appears: "Mr. J. V. Tully the contractor for the stone work on the new bridges now in course of construction in this County has com-

pleted his work on the two small bridges on the river road between Sutton and Bell's Mills, and the bridges are now being placed in position. Mr. Tully is now preparing to go to work on the abutments for the bridge across Old Womans Run at the head of town."

In the issue of February 23, 1900, this local appears: "Work on the abutments for the new bridge across Old Womans Run at the head of town is again delayed by inclement weather."

In the issue of January 26, 1900, the following local appears: J. V. Tully the contractor has a force of hands working on the bridge at the mouth of Old Womans Run at the upper end of town. Work on excavating for the abutments was begun yesterday. Work has been delayed by reason of bad weather."

In the issue of May 4, 1900, the following appeared in the proceedings of the County Court: "J. V. Tully allowed $3797.15 for building the abutments for the bridge across Old Womans Run."

In the issue of July 20, 1900, the following appears in the County Court proceedings: "Ira H. Greathouse appointed commissioner to contract for the erection of abutments for bridges across Oil Creek."

In the issue of April 27, 1900, the following local appeared: "The abutments for the bridge across Old Womans Run will be completed this week."

In the issue of June 1, 1900, this local appeared: "The bridge across Old Womans Run was completed last Saturday and
193 accepted by the County Court Tuesday; Harry Meridith, who had charge of the work left for his home in Marietta."

In our issue of August 24, 1900, the following appears among the resolutions adopted by the County Republican Convention: "We condemn the extravagant and personal conduct of the County Court especially waste and unbusiness methods in building bridges and roads by which thousands of dollars have unjustly been felched from the Taxpayers."

Our taxes are increasing while our public property and buildings are going to ruin and decay.

Our public roads are a disgrace to the County, although large sums of money are collected each year for their improvement.

We believe our fiscal affairs should be corrected and reformed and we cordially invite all good citizens to aid us in this needed work.

Resolved that in the interests of the whole people we commend and insist upon the opening of the books of this County, thereby showing the taxpayers what has been done with the vast sums of money collected from year to year by the party in power."

Q. —. State whether or not you are acquainted with the plaintiff, A. T. Taylor?

A. I am.

Q. 6. State if you know whether or not he was present and participating in the convention which adopted the resolutions you have just read?

A. I think he was present, I am not positive.

Q. 7. State whether or not he is a subscriber to your paper, the Braxton Central, and if so how long has he been taking the same?

A. He is, and has been taking it ever since I have been publishing it.

Q. 8. State its circulation for the years 1899, 1900, and 1901?

A. From 700 to 800.

Q. 9. What proportion of that number of copies of the paper issued to citizens of Braxton County?

A. I should think five sixths.

194 Q. 10. State whether or not it went to all parts of the County?

A. It has a general circulation within the County.

Obj. Plaintiff by counsel, objects to the foregoing deposition because immaterial.

JAMES H. DUNN.

1 da.

STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

I, C. H. Bland, Notary for said County, certify that the foregoing depositions of Wm. J. Perrine, David Evans, John A. Grose and James H. Dunn, were duly taken, sworn to and subscribed at the times and places therein set out by agreement of parties.

Given under my hand this the 29th day of March, 1892.

C. H. BLAND, *Notary.*

Notice to Take Depositions.

To A. T. Taylor:

Take notice that on the 26th day of April, 1902, at Law office of Linn, Byrne & Hines in the town of Sutton in the County of Braxton, State of West Virginia, between the hours of 6 o'clock a. m. and 6 o'clock p. m. of that day, I shall proceed to take the depositions of witnesses to be read as *evedence* in my behalf in a certain chancery cause now pending in the Circuit Court of Braxton County wherein you are plaintiff and myself and others are defendants.

And if from any cause the taking of said depositions should not be commenced on that day, or being commenced should not be completed, the taking thereof will be adjourned and continued from day to day, *of* from time to time until finished.

This 23d day of April, 1902.

J. V. TULLY.

DULIN & FOX,
LINN, BYRNE & HINES,
Attorneys.

195 Depositions taken before me, E. G. Rider, a notary public for the County of Braxton, West Virginia, on the 26th day of April, 1902, to be read as evidence upon the hearing of the Chancery cause of A. T. Taylor against the County Court of Braxton County and others, on behalf of defendant James V. Tully, pursuant to the notice hereto annexed, at the law office of Linn, Byrne & Hines.

Present, B. P. & V. P. Hall, attorneys for plaintiff, and plaintiff A. T. Taylor in person, and R. G. Linn, C. C. Hines and Alex. Dulin, attorneys for defendant J. V. Tully.

Then came TOM LEONARD, a witness of lawful age, introduced on behalf of plaintiff, who being first duly sworn, says:

By Mr. DULIN:

Q. 1. Where do you reside?

A. Wheeling.

Q. 2. What is your occupation or business?

A. Stone cutter and stone mason.

Q. 3. What experience have you had as a stone mason and Builder?

A. Well, I followed this business for the last 14 or 15 years.

Q. 4. You may state whether or not you ever had charge of the construction of any stone work? If so state the kind and character of the work you have done?

A. I have had charge of the bridge work on the Ohio River railroad for about three years, and also in Jackson County have built two bridges, and in Wood County one bridge, and have worked on several other jobs in different parts.

Q. 5. You may state whether you were present and assisted in the construction of the bridge abutments built by James Tully in Braxton County, in the years 1899 and 1900?

A. Yes, sir, I built them myself, five of them.

Q. 6. What position did you *accupy* in the construction of said abutments?

A. Well, I looked after the work for Mr. Tully in building the abutments.

196 Q. 7. Please name the bridges the abutments of which you superintended the construction of?

A. Well, the bridge across Old Womans Run up here, and the two bridges across Taylors Run and Frames Run, also the bridge at Burnsville across Oil Creek, and started the Confluence bridge.

Q. 8. State the kind and character of the work done on the abutments the bridges you have named, and the character of the *mateial* put in the same?

A. Well, the stone work was a very good class of work, and used cement and sand for mortar.

Q. 9. What would you say as to the work and the material used in the construction of these several abutments being first class?

A. Well, what work I have been doing over the country has been

about on an average of the work and has passed as first class work.

Q. 10. How does the work on these abutments compare with the class of work and material used in the construction of the railroad bridges where you have worked, where they had engineers and inspectors for the work?

A. Well, it is about on an average.

Q. 11. What is the usual price of this class of work when contracted for railroad or County bridges where you have worked by the yard?

Obj. Plaintiff, by counsel, objects to this question because improper.

A. From $8., $9., $10. and $11. per yard; that is, on railroad work and County.

Q. 12. With what was the inside of these abutments filled?

A. Stone and mortar.

Q. 13. Describe how the stone and mortar was put in to make the filling?

A. Well, large stone, broken stone and mortar.

Q. 14. You may state whether the filling placed in these abutments was of the kind and character used in the construction of abutments in which there was a permanent and first class job of work desired?

A. Yes, sir.

197 Q. 15. What kind of sand did you use to mix with the cement and in what proportion was the same mixed?

A. Well, as well as I remember, it was all river sand and a very good quality of sand and as well as I remember it was mixed with one third cement or near it.

Q. 16. Is that the proper proportion of the mixture for that class of work?

A. Yes, sir.

Q. 17. Was the sand screened?

A. No, sir.

Q. 18. Why was it not?

A. It didn't require it.

Q. 19. Please explain why the sand didn't require screening?

A. Because there was no gravel to hurt.

Q. *30.* Well, is it usual to screen all sand used in this class of work whether for railroad or County bridges?

A. No, sir, not unless there is very large stone or gravel.

Q. 21. Do you know W. J. Perrine, a member of the County Court? of this County?

A. No, sir, not that I remember.

Q. 22. In the construction of the abutments for the bridges at Frames Run and Taylors Run or at any of them, you may state whether or not you directed your men to do a better job of work or take more care with their work when anybody was present?

Obj. Plaintiff, by counsel, objects to this question because the witnesses for plaintiff do not mention this witness in connection with the matter inquired about.

A. No, sir.

Q. 23. You may state whether or not Mr. Tully ever gave you any directions about having the men take care or do their work in a certain way when any one was present during the construction of said abutments?

Obj. Plaintiff by counsel objects to this question for the reason stated above.

A. No, sir.

Q. 24. Do you know A. T. Taylor, the plaintiff in this case?

198 A. Well, I know the gentleman when I see him.

Q. 25. You may state whether or not you saw him frequently while you were constructing the abutments for the Frames Run and Taylor Run bridges?

A. Yes sir, he was with us quite often, except he was away for a short time.

Q. 26. When he was present while you were doing this work, you may state whether or not he made any suggestions about the character of the work being done or criticised it or objected to it in any way?

A. No, sir, not that I know of.

Q. 27. What kind of foundations were the abutments for said two bridges and the bridge across Old Womans Run built on?

A. Well, the two bridges down the river were built on timber, and one abutment at Old Womans Run was on timber and the other on stone.

Q. 28. Why was the timber placed in the foundation of these abutments?

A. On account of loose, muddy, soft ground.

Q. 29. You may state whether it was necessary and customary to place timbers of the kind used in the construction of these abutments for foundations such as you had there?

A. Yes, sir, either timber or concrete.

Q. 30. You may state whether or not these timbers were properly put in and bolted together when *nescessary?*

A. Yes, sir.

Q. 31. What kind of bolts were used in fastening the timbers together?

A. Iron bolts, what we call grip bolts.

Q. 32. Do you know anything about the value or price of timber used in these foundations?

A. Well, these foundations was of a good class of timber, and on other jobs it run from $18, to $20 a thousand.

Q. 33. You may state whether or not it isn't a fact that the chief cost of these timber foundations isn't in the putting of the foundation properly?

199 Obj. Plaintiff by counsel objects to this question because leading.

A. Yes, sir.

Q. 34. Where are you working now?

A. On Gauley River, four miles from Summersville, in Nicholas County.

Q. 35. What are you doing?

A. Foreman for Mr. Tully, building a bridge across Gauley river.

Q. 36. How does the said bridges in Braxton County, done by you, compare with the bridges across Gauley River?

Obj. Plaintiff by counsel objects to this question because immaterial and improper.

A. It is on an average the same class of work.

Q. 37. State if you know what price Tully is getting for the abutments for the bridge across Gauley River?

A. Well, what Mr. Tully has told me it is $7.50 a yard.

Cross-examination.

By Mr. HALL:

Q. 1. If you knew that Tully was only getting $7.50 for the work in Nicholas County, why did you state awhile ago that the prices for such work where you had worked run from $8.00 up?

A. Well, because work where I have been working had been running at that price. I had been getting that price for the work.

Q. 2. You had been working at that bridge in Nicholas County before you made the statement that you made a few minutes ago, hadn't you?

A. As I understood the question, it was the general run of the price for such work, where I had been *workin.*

Q. 3. The work on the Gauley bridge abutments is in fact a better class of work, and more expensive than the work done on the abutments in Braxton County by Tully, is it not?

A. No, it is the same class of work; that is that class of the abutments.

200 Q. 4. While they are of the same class of abutments, is it not a fact that the work is required to be done in a way which is more expensive than the manner in which the abutments in Braxton County were repuired to be made by Tully?

A. No, sir, I don't know as it would be any more expensive, to the contractor.

Q. 5. What is the difference in the manner in which the work is required to be done?

A. I don't know as there was any difference; it is the same class of work, only there is piers and abutments.

Q. 6. Do you know what kind of lumber or timber was used for the foundation for the abutments spoken of? I mean as to the kind of trees and lumber?

A. Beech and maple as well as I remember.

Q. 7. Was the same kind used in the foundations of the abutments to the bridges at Confluence and Burnsville?

A. Yes, sir to the three abutments that I put in.

Q. 8. Is it not a fact that those kinds of timber have very little or no market value in Braxton County?

A. I couldn't tell you.

Q. 8. You have stated in substance that the chief cost of timber foundations is putting *tham* in properly, when the timber is on the ground isn't it a fact that all you have to do is to place the pieces and if necessary bolt them?

A. Yes, sir that is all you have to do, is to put them in there, and place them right.

Q. 10. Is the work on the abutments built by Tully in this County heavy as to the thickness of the walls as the same size abutments and for the same length of span as abutments of the railroad work you have spoken of?

A. Well, on an average the same

Q. 11. You speak of the inside of the walls being filled with stone and mortar. Do you mean that the walls are built double and the space between the two walls filled with stone and mortar?

A. Yes, sir.

201 Q. 12. You have stated in substance that this space was filled with large stone, small broken stone and mortar. Is it not a fact that to do a first class job this space should be filled with stone broken small and mortar, instead of using partly large stone?

A. No, sir, it is a rule in masonry that large stones shall be used instead of small stone, only in filling in small places.

Q. 13. When Tully was present he looked after and directed how the work was to be done, did he not?

A. Well, he helped see how the work went on.

Redirect.

By Mr. DULIN:

Q. 1. You may state whether or not you continued in charge of the work and directed the men as well when Mr. Tully was present as when he was absent?

A. Yes, sir.

And further this deponent saith not.

TOM LEONARD.

Then came G. T. HYER, a witness of lawful age, introduced on behalf of defendant J. V. Tully, who being first duly sworn deposes and says:

By Mr. DULIN:

Q. 1. Where do you reside?

A. Sutton.

Q. 2. You may state whether or not you did any work on or about the erection of the abutments to the bridges across Frames Run, Taylors Run and Old Womans Run in this County?

A. I hauled the stone from the quarry and the sand and the cement.

Q. 3. What kind and quality of sand did you haul for use in said abutments?

A. We hauled what I thought was good sand. I got it right along the river near the bridges, some from the mouth of Buffalo.

Q. 4. State whether or not you hauled any muck to be used in the mortar for *dsaid* abutments instead of sand?

202 A. No, sir, I didn't haul any muck.

Q. 5. Was *ther* any muck used in making mortar for said abutments?

A. Not to my knowledge there wasn't.

Q. 6. Do you know Frank Frame who furnished the timber to go in the foundations for the abutments at Frames Run and Taylors Run?

A. Yes, sir I know him.

Q. 7. State whether or not you were present when J. V. Tully made a contract with said Frame for the timber to go in the foundation to said abutments?

A. Yes, sir, I was.

Q. 8. State if you know what said Tully offered per thousand feet for the timber to go in foundation to said abutments?

Obj. Plaintiff by counsel objects to this question because what Tully offered him is immaterial.

A. He offered him $10. per thousand.

Q. 9. Do you know what said Frame agreed to deliver the timber at the point for?

A. I think he contracted it for the four abutments at $50. $50. or $60. that is for the two bridges.

Q. 10. Did said Frame say anything about whether he would prefer to take the contract by the job or by the thousand feet?

Obj. Plaintiff by counsel objects to this question because immaterial and because Frame was asked as to this matter.

A. They talked about it and Mr. Frame said he could get $8. per thousand for that kind of timber at Charleston, and Mr. Tully said that he would give him $10. and he said that he would rather take it by contract and told him what he'd do it for, I don't know whether it was $50. or $60.

Q. 11. You may state whether or not you made any calculation as to what the timber have come to at $10. per thousand in Mr. Frame's presence?

Obj. Plaintiff by counsel objects to this question for the reason stated in the last objection.

A. No, sir, I did not in Mr. Frame's presence. Mr. Tully and I talked about it after we left Mr. Frame, and I asked him how
203 many feet it would take, and he told me it would take from 30 to 35000, feet for the four abutments, I think is what he said. The way I figured on it it would cost $120.00 for the four abutments, for the timber he used in the four abutments.

Q. 12. Then it would be from 30 to 3500 feet for each abutment instead of *of* from 30 to 35000?

Obj. Plaintiff, by counsel, objects to this question because it is leading.

A. That is right.

Cross-examination.

By Mr. HALL:

Q. 1. It is about 95 miles from these bridges to Charleston, the way such timber you have spoken of would have to be shipped, is it not?

A. I suppose it is.

Q. 2. You didn't haul any sand to the Taylor Run bridge did you?

A. Yes sir I hauled sand to the Taylor Run bridge.

Q. 3. Where did you haul it from?

A. I hauled it from across there at the mouth of Buffalo, and I got some sand right there at the bridge, and got the rest along the river bank. I furnished the sand for both bridges.

Q. 4. Is it not a fact that you got what you call sand for the lower bridge right out of the river bank, just below the bridge, where is a growth of elders and weeds and pawpaws and other small shrubbery?

A. The first sand we got was from the mouth of Buffalo. I had one team to haul all day from the mouth of Buffalo: that is for one bridge now, and then we got sand right below the lower abutment, but it didn't have any elder or pawpaws in it, they won't grow in sand I don't think.

Q. 5. How far is it from the Taylor run bridge to the mouth of Buffalo?

A. I don't know the distance at all. It ain't very far.

Q. 6. About how far?

204 A. From three quarters to a mile, I don't know at all.

Q. 7. If there was good sand right there by the bridge, why did you haul sand from the mouth of Buffalo?

A. Well, there was plenty of sand at the mouth of Buffalo, and there is nothing like what you would call a sand bar at the bridge. We couldn't get at the sand down at the bridge with a wagon, and to run it up in a wheelbarrow, and that the mouth of Buffalo was the most convenient to get at with a wagon.

Q. 8. Is it not a *fact* that Jacob Frame who mixed the mortar for the upper abutment to the Taylor run bridge shoveled the most if not all the sand used for the said abutment from the side of the road near the mortar bed, without its being wheelbarrowed at all, or hauled?

A. No, I furnished the sand, and he was working for Tully, and I had a contract to furnish the sand.

Q. 9. How were you paid; by the day, by the load, or in what manner?

A. I got a dollar a yard for the *ston* and had to furnish the sand and cement, I mean I had to haul the cement from the depot.

Q. 10. They could have used half muck in making the mortar without you knowing anything about it, couldn't they?

A. No, sir, I think I was there every day they were building the abutments. I think I was *ther* every day.

Q. 11. Were you there all the time, or didn't you go with your team?

A. I wasn't there all the time, but seen that they had sand all the time; that was part of my business.

And *furthur* this deponent saith not.

C. T. HYER.

1 da.

Then came J. V. TULLY, a witness of lawful age, in his own behalf, who being first duly sworn, deposes and says:

By Mr. DULIN:

Q. 1. Are you acquainted with Jacob Frame, a witness who testified in this case on behalf of plaintiff?

205 A. Yes, sir, I am.

Q. 2. Did he work for you any in the construction of the abutments for the bridges across Taylors and Frames runs?

A. Yes, sir.

Q. 3. What did he do?

A. He was just a common laborer. He just done thing- that had to be done.

Q. 4. Mr. Frame says in answer to question 16 when asked whether he had ever heard you speak of how the work looked, "Well, I heard the remark, some one say the abutments didn't set square, and didn't look right, and he (meaning you) said he didn't care a damn how they looked, for he didn't lay them off." What have you to say as to that statement?

A. I never said anything of the kind. I don't talk about my work that way.

Q. 5. From *whome* did you get the timber and lumber that was *plaed* in the foundation of said abutments?

A. From Frank Frame.

Q. 6. How much did you pay him for said lumber?

A. $50.00.

Q. 7. Please state what occurred between you and Frame in relation to said lumber when you went to contract for it?

Obj. Plaintiff, by counsel, objects to this question, because Frame was not asked anything about this matter.

A. The first time I went to see Mr. Frame I talked about it in regard to the timber; I told him how many pieces I wanted to get and what size I wanted them to be, and wanted to know what per thousand feet he would take to get them out for me, and he said that he didn't know, but that he would study on it and let me know in a few days. A short time after that Mr. Hyer, *Gearge* Hyer and I were coming by *ther* and he was over where Mr. Frame was at work and I asked him if he had come to any conclusion as to the price of furnishing that timber for the abutments, and he said

he had been studying *somthing* about it, and asked him what
206 he would furnish it for, and he said he didn't know, and I told him I was sure I didn't know what he could *it* furnish it for, and I asked him what that kind of timber was worth around there, and he said he heard that it was worth $8.00 in the log at Charleston, and I told him that it wouldn't be worth any more there than it would be in Charleston would it. He said he couldn't cut that kind of timber and score it and *hue* it for that price, and I told him I would give him $10 per thousand for it, and he said he had been studying some about it, and that he would sooner take it by the contract, and he would furnish enough for both bridges for $50.00.

Q. 8. Had he taken you up at your offer, what would the timber have amounted to?

A. I think I had it figured up it would have been $126.50, if I am not mistaken, there was 3160 feet in each abutment.

Q. 9. Jacob Frame in his deposition in answer to question 16 says that the abutments didn't set square; have you any explanation about that matter?

A. Yes, sir, the abutments were to start 18 feet on the bottom, and finish 16½ under coping, and we started that pier a little larger than it was to have been, and I just carried it up to that size and I think it is about a foot longer than it was to be, so I started the other pier at the net measurement, and to a person that don't understand it, or hasn't any mechanical ideas might think that abutments don't set square, but they do.

Q. 10. State whether or not the fact that one of the abutments is a foot longer than the specifications required is any injury to it?

A. No, sir, the bigger and better an abutment is, the better it is.

Q. 11. State whether or not you were paid for the extra foot in length when you settled with the County Court?

A. No, sir, I was just paid for what the specifications called for.

Q. 12. Please describe how these abutments were constructed, beginning with the foundation?

207 A. Well, the specifications called for the abutments to go down where it would be considered *an* good foundation to start the same on, and if we didn't strike rock in a reasonable distance to get any kind of good hardwood timber, beech, sugar, hickory or oak, and *hue* it down on two sides to a thickness of twelve inches, and lay the short timbers in the bottom and the longer ones on top and spike *tham* together with ¾ round iron drift bolts, 18 inches long, then the ma*a*sonry was started with good heavy stone bedded and jointed, cut true to the square for the face stone, and the backing and filling was scabbled down to the side of the face stone, and vacancy or space between was filled up with mortar and spalls or broken stone.

Q. 13. Of what was your mortar composed used in the construction of these abutments?

A. It was composed of good clean sand and cement.

Q. 14. In what proportion was it mixed?

A. It was mixed one part cement and two parts sand.

Q. 15. You may state whether or not that is the proper proportion for mortar for that class of work?

A. Yes, sir, that is the way all engineers and architects require it to be mixed.

Q. 16. How did you get your sand to make said mortar, and by *whome* was the sand furnished?

A. I gave G. T. Hyer the contract of hauling the stone by the cubic yard, and he was to haul the cement from the depot, and haul the sand and get the same measurement in the abutments as I got from the County Court.

Q. 16. Was there any muck or dirt used in the making of the mortar to be used in said abutments?

A. No, sir, it didn't cost me any more to get good clean sand than what it did to get muck. I would have to pay Mr. Hyer just the same for the muck as I did for the sand, and it would be no advantage to me whatever to use that kind of material.

Q. 17. You may state whether or not W. J. Perrine, a member of the County Court, was present at any time while you
208 were constructing the Taylor or Frames run bridge abutments?

A. I think Mr. Perrine was passing there and *stoped* off about ½ hour.

Q. 18. In answer to the questions 6 and 7, in chief, witness Frank Frame says there was a difference in the character of the work done while Mr. Perrine was present, than when he was not, and that the difference was made under your direction; that in filling said walls you had the rock broke finer, and was more particular to have the work done right, and more mortar put on while Perine was there; what have you to say about that statement?

A. I never *have* no such orders to any of my men. The class of work we done would stand inspection at any time by any person, at any time by any person, and I don't think there is a mason in the United States that could tell that the work had been done different in the length of ½ hour on a job of that size, while the commissioner was there, instead of a person that never seen a bridge built, until he started to work on that one.

Q. 19. Was the timber you placed in the foundation of these abutments the kind and quality required by the specifications?

A. Yes, sir.

Q. 20. Please state what is necessary for a contractor to take into consideration in making his estimate price of timber, when used in the foundation of abutments of this character?

A. Along *thaose* rivers, a person runs into quick sand, water comes in and it is at the deepest place you put the timbers, and it is costly to keep water bailed out, and a person never feels safe until he gets the timbers in, and it is the most costly and dangerous part of the work to get the foundation to keep the water bailed out, and keep the timber from floating around until you get the masonry started.

Q. 21. You may state whether or not there is any way of
209 telling without an actual test before the foundation is excavated whether you will strike quick sand or not?

A. No, sir, dig down and see, is the only way I know of. There is a practical price for all this work, but that is what you would have to base your figures on.

Q. 22. What is that price?

A. This W. Va. & P. R. R. they got $26.00 a thousand, all the timber used in the coffer dams, and on the *Burnesville* bridge that I built in 1892, we got $23.00 a thousand for, and this work I took at $20.00 and on this they cut down to $15.00 per thousand feet.

Obj. Plaintiff, by counsel, objects to this answer, because immaterial and improper.

Cross-examination.

By Mr. Hall:

Q. 1. The price per thousand feet was not cut down was it, but it was claimed that you hadn't laid the timber as close together as it should have been, and that you in fact hadn't furnished as many thousand feet as the calculation of the space would indicate, and the amount was cut down ¼ instead of the price, is not that the way it was done?

A. No, sir, I was paid at the rate of $15.00 per thousand for 3160 feet in each abutment, I think it was.

Q. 2. But the reason for cutting the amount down was that the amount had been ascertained by calculating the space covered by the timber and the claim of the County Court was that, as the logs were not straight, there was a great deal of space not covered, and that was the ground on which they cut down the amount; is that not true?

A. I don't think there was anything said about the timber not being straight, and it is practical in all the work I ever done to either measure just the same as masonry and take the same measurement per yard, or else take the length and thickness of the timber and throw it into board measure, and that is what was done with those foundations, and they paid me $15.00 per thousand feet for it.

210 Q. 3. How did you make the calculation of the amount of timber?

A. I think the Court had the Prosecuting Attorney to do the figuring.

Q. 4. I didn't ask you who did the figuring, but I want to know whether you ascertained the amount of timber by calculating the space occupied by the timber, or by calculating each piece of timber separately?

A. We calculated the space, and I got pay for it at $15.00 per thousand.

Q. 5. And the ground for cutting the price down was that in making the calculation that way, it actually showed a greater amount of timber than you had actually used; is not that true?

A. They talked *somthing* like that, but that wasn't or wouldn't *or wouldn't* cut it down near ¼ and I told the Court that I could hold them to their contract, but that I would stand that cut on it rather than have any trouble.

Q. 6. What kind of timber was used on the W. Va. & P. R. R. Co. as spoken of by you?

A. Well, there was mostly all kinds of hard timber used. There was hickory, sugar and beech and oak, and some of them used cull cross-ties, or they used cull cross-ties, practically the same kind that was used in these abutments.

Q. 8. Did they use that kind of timber in making coffer dams?

A. Yes, sir, they used that kind of timber in about 16 or 20 that I was foreman in putting in, from Confluence to the head of Salt Lick.

Q. 9. Do you mean that in making coffer dams *thay* used timber *huen* only on two sides?

A. I put in the timbers and foundations for the two bridges across Oil Creek and six on Salt Lick, each *bridhe* had two abutments or piers, and there never was any other kind of timber went into them except *huen* on each side.

Q. 10. Do you think that in the last two questions I have
211 been asking you about what kind of timber was used in the foundation of piers and abutments?

A. Yes, sir; that was *whet* I thought you asked me.

Q. 11. Well, I wasn't asking you about that, but I was asking you about coffer dams. Do you mean that they use timber *huen* only on two sides in making coffer dams?

A. No, sir; I didn't mean that, a coffer dam and a foundation is two different things.

Q. 12. They use sawn timber in making coffer dams, do they not?

A. Yes, sir; they do for part of it, a coffer dam is just to keep the water out while you are putting down your excavation and in places where you can use boards they generally use cull boards or some kind of old waste lumber for a temporary coffer dam.

Q. 13. A coffer dam *mist* be tight enough to exclude the water and to do that it requires pretty true lumber and even where the lumber fits closely it is sometimes *nescessary* to also *cork* the cracks and this is sometimes done, is not this true?

A. No, sir, I never worked on a job where that had to be done, and I never seen it done. You can't get lumber tight enough to exclude the water. The water is kept out with clay. Or build a box about four feet wide, and fill it in between with clay and tamp it to keep the water out. And for the frame just use any kind of a round straight pole.

Q. 14. You were not interfered with by water or quicksand in excavating for the abutments built by you in this County, were you?

A. Yes, sir, I struck quick sand in every one, I think I put in, except one where there was stone.

Q. 15. The water and quicksand interfered more with the excavating than any thing else and the question of whether there may be

water or quicksand entered more into fixing the price of the excavating than of the price of anything else, does it not?

212 A. Yes, sir, I guess it would, except you would strike boulders or old logs.

Q. 16. It would not require a stone mason to tell whether you pounded the rock up better and used more mortar when Perrine was present than when he was absent, would it?

A. Yes, sir, I *thinl* it would take an experienced man to know a good job from a bad one.

Q. 17. It doesn't take an experienced — to tell a big rock from a little one, nor to tell a wagon load of mortar from a wheelbarrow full, does it?

A. I wouldn't suppose it would. We never hauled our mortar in wagons.

Q. 18. In your deposition heretofore taken, you have spoken about the abutments and piers you are building for the bridge across Gauley River. Are you building one or more piers out in the river?

A. Well, there is one pier in the river the way the water is up now, but last fall when I put in the foundation for that pier, it was out from the edge of the water 20 feet or more, and the pier on the north side of the river is built on a big flat stone about 15 feet high.

Q. 19. Didn't it require considerable excavating for the pier first mentioned?

A. No, sir, there was about five of us started in the morning, and we dug out the excavation and built the masonry 3½ feet that day.

Q. 20. Wasn't considerable excavating required for the abutments on each side of the river?

A. I took the contract for building the abutments and making the approaches, and I have only built one yet, about four men excavated it in a day, and threw it back, which makes a fill, so I consider it didn't cost me much to do that excavation.

Q. 21. You get nothing above the $7.50 for the stone work, for the excavating or making the approaches, do you?

A. Yes, sir, I get $600.00 for making the fills.

Q. 22. But nothing for the excavating?

213 A. No, sir, there was no excavating to amount to anything to be done, and I never mentioned about it.

Q. 23. Is it not a fact that the Taylors run bridge the span is a little longer on one side than it is on the other?

A. What span do you mean?

Q. 24. I mean is it not a fact that it is *farthur* from one abutment to the other on the upper side than it is on the lower side, or the side next the river?

A. I don't know. It might vary a little. The iron bridge man told me that directed the work that the bridges fit all right, and that it was the best piece of work that he had seen for a long time.

Obj. Plaintiff, by counsel, excepts to that part of the last answer in which the witness states what the bridge man told him.

Q. 25. You have spoken about putting spikes or bolts in the timbers for the foundation. Is it not a fact that five was the greatest

number used in any one foundation, and that only three was used in some?

A. No, sir; it ain't.

Q. 26. You were allowed $192.52, for the lumber or timber used in the foundation of the abutments at Taylor's and Frame's run, were you not?

A. I was allowed $15.00 a thousand, I don't know just what it come to.

Q. 27. It came to about that amount, didn't it?

A. I have an idea it did, it can be very easily figured up. About $189.00, I think.

Q. 28. How much did you pay for the timber that went into the foundations of the abutments at Old Woman's run, and how much were you allowed for it?

A. I bought the timber of Mr. Frame, but I don't know how much I paid him for it. I was paid at the *rat* of $15.00 a thousand, but there was timber used in but one foundation; the other was stone.

Q. 28. Do you know what you paid for the timber used in
214 the Confluence bridge, and the bridge across Oil Creek at Burnsville, and what you were allowed for it?

A. I was allowed the same for it that I was for the balance, and I hired men by the day to get it out, and it costs me a good deal more than it did for Mr. Frame to get out my timber. I figured on the timber costing me from $12 to $15 per thousand when I took the contract.

Q. 29. Is it not a fact that the excavating at the Taylor's and Frame's run bridges cost you only $52.50, that is, 24 days' work at one, and 18 days at the other, at $1.25 a day and that you were allowed $186 for it?

A. No, sir, it ain't; I don't know myself what it cost, and I don't think any body else does, to do that excavation. I took it at the practical price, and never kept no account of what it cost me to do certain parts of the work.

Q. 30. If you don't know what it cost, how can you say positively that what I have asked you is not true?

A. Well, you asked me if it wasn't a fact if the excavation at the Frame's and Taylor's run bridges didn't cost me $52.50, and I said it wasn't a fact, that I didn't know myself and didn't think any body else knew, am satisfied they don't know.

And *furthur* this deponent saith not.

J. V. TULLY.

STATE OF WEST VIRGINIA, *Braxton County, To wit:*

I, E. G. Rider, a notary for said County, do certify that the depositions of Tom Leonard, G. T. Hyer and J. V. Tully were duly taken sworn and subscribed before me, at the time and place and for the purpose set out in the caption hereto, and in the notice hereto annexed.

Given under my hand this 28th day of April, 1902.

——— ———, *Notary.*

At another day to-wit: at a term of the Circuit Court of
215 Braxton held and continued on the 9th day of May, 1902, the following order was entered in this cause:

Order of Reference.

This cause came on this day to be heard upon plaintiff's original bill and amended bill filed at rules process to answer the same duly executed on all the defendants except the Canton Bridge Company, order of publication duly published and posted as to said Company, plaintiff's original bill taken for confessed as to all the said defendants except J. V. Tully and the Canton Bridge Company; said amended bill taken for confessed as to all of said defendants except the National Exchange Bank of Weston and the Canton Bridge Company, the demurrer and answer of J. V. Tully filed at December Rules, 1901, to said original bill, joinder by plaintiff in said demurrer and general replication to said answer, the demurrer and answer of the National Exchange Bank of Weston, filed at April Rules, 1902, joinder by plaintiff in said demurrer and general replication to said answer: the answer of Frank H. Kidd to said bills this day filed and general replication thereto by plaintiff; copies of orders of the County Court made July 13th, 1899, August 14th, 1899, October 5th, 1899, December 15th, 1899, December 16th, 1899, January 4th, 1900, April 27th, 1900, May 29th, 1900, July 6th, 1900, July 13th, 1900, March 7th, 1901, July 11th, 1901, July 13th, 1899, July 13th, 1900, July 10th, 1901, filed by plaintiff; depositions of witnesses, exhibits filed and upon the motion of defendant- Tully, The National Exchange Bank of Weston and F. H. Kidd to *disolve* the injunction heretofore awarded in this cause, and was argued by counsel.

On consideration whereof it is adjudged ordered and decreed that the demurrer of J. V. Tully and the National Exchange Bank of Weston, and said motion to dissolve said injunction be over-
216 ruled: and that this cause be *refered* to E. S. Bland, one of the commissioners of this Court, who is directed to ascertain and report what funds, if any, including the levy of 1899 the County Court of Braxton had on hands, belonging to said County, at the time of *enterin* into the contracts with the Canton Bridge Company and J. V. Tully, applicable to said contracts: what indebtedness if any there was at that time outstanding against said County Court, or said County, payable out of said funds; what amount, if any had been paid at the time of the institution of this suit on the orders or drafts issued to said Canton Bridge Company and J. V. Tully respectively under and in pursuance of said contracts; and what orders or drafts had been assigned with the dates of said assignments, or the order in which they were made and any other pertinent matter required by any of the parties hereto and any matter deemed pertinent by said commissioner.

But before acting hereunder, said commissioner shall give notice to the parties to this suit of the time and place of executing this order of reference by notice published in the Braxton Democrat, a weekly newspaper published in Braxton County, for four successive weeks

prior to the date fixed for executing the same, and by posting or causing to be posted on the front door of the Court house of said Braxton County at least twenty days before the date fixed for executing the same, a like notice, which when so published and posted, shall be equivalent to personal service on the parties.

At another day to-wit: at a special term of the Circuit Court of Braxton County, held and *contunued* on the 9th day of February, 1903, the following order was entered in said cause:

This cause having heretofore by an order made herein on May 9th, 1902, been *refered* to E. S. Bland, who was then one of the commissioners of this court, and the said Bland having died, without making a report herein, this cause is *refered* to C. H. Bland, one of the commissioners of this Court, who is directed after giving notice as provided in said former order, to execute said order of reference, and report the matters therein directed to be reported.

217 *Commissioner's Notice.*

A. T. TAYLOR, a Taxpayer of the County of Braxton, on Behalf of *of* Himself and Other Taxpayers of the County of Braxton, Plaintiffs,

vs.

THE COUNTY COURT OF BRAXTON COUNTY, J. V. TULLY, THE CANTON BRIDGE COMPANY, Corperation; F. H. KIDD, GEORGE GOAD, Sheriff of Braxton County; THE NATIONAL EXCHANGE BANK OF WESTON, JOSEPH FUCCY, OLLIE RUDKIN, and B. F. FISHER, Defendants.

In the Circuit Court of Braxton County, West Virginia, in Chancery.

To the above named parties, plaintiffs and defendants:

You will take notice that the above entitled cause was *refered* to me, one of the commissioners of said Court, on the 9th day of Feb., 1903, for the purpose of taking proof and reporting to the Court the facts particularly required by the decree of reference entered in said cause at the November term, 1902, to which you are *refered* for a particular statement of everything to be examined into and reported by the commissioner. In *accordence* with the order of reference aforesaid, I have fixed upon the 12th day of March, 1903, between the hours of 9 o'clock a. m. and 6 p. m. of said day at my office in the town of Sutton, in the County of Braxton, State of West Virginia, to take the testimony of both parties to said action, if desired and deemed *nescessary*, and will continue the same from day to day, and time to time if *nescessary*, until all the testimony and the report of the undersigned is completed as required by said order.

You are commanded in the name of the State of West Virginia to be and appear before me in obedience to this notice, and to protect your interests in relation to the matters before me.

Given under my hand at my office, this the 11th day of February, 1903.

C. H. BLAND,
Commissioner.

W. E. HAYMOND,
Plaintiffs' Attorney.

218 *Certificate of Publication.*

STATE OF WEST VIRGINIA, *County of Braxton, To wit:*

I, Ben Gillispie, publisher of the Braxton Democrat, a weekly newspaper published in the town of Sutton, Braxton County, State of West Virginia, do certify that the *annexed* "Commissioner's Notice" in the Chancery cause of A. T. Taylor &c., *versus* The County Court and others was duly published in said paper once a week for four successive weeks, commencing on the 12th day of Feb'y, 1903, and was posted at the front door of the Court house.

Given under my hand this 15th day of April, 1903.

BEN GILLISPIE, *Publisher.*

Printer's fee $9.84.

A. T. TAYLOR
vs.
COUNTY COURT OF BRAXTON COUNTY AND OTHERS.

In Chancery.

COMMISSIONER'S OFFICE, *April 14th*, 1903.

To the Honorable W. F. Bennett, Judge of the Circuit Court of Braxton County, West Virginia:

Pursuant to the order of reference entered in the above styled cause on the 9th day of May, 1902, and the subsequent order made in said cause of the 9th day of February, 1903, *refering* the same to the undersigned commissioner, with directions to execute the said former order, by which he is "directed to ascertain and report what funds, if any, including the levy of 1899, the County Court of Braxton County had on hands belonging to said County, at the time of entering into the contracts with the Canton Bridge Company and J. V. Tully applicable to said Contracts; what indebtedness, if any, there was at the time outstanding against said County Court, or said County, payable out of said funds; what amount, if any, had been paid at the time of the institution of this suit, on the orders or drafts *issuee* to said Canton Bridge Company and J. V. Tully, respectively, under and in pursuance of
219 said contracts; and what orders or drafts had been signed with the dates of said assignments, or the order in which they were made: and any other pertinent matter required by any of the parties hereto, and any matter deemed pertinent by said commissioner," the undersigned commissioner reports that after having

published and posted the notice to parties as required by said orders of reference he proceeded to execute said reference at the time fixed upon by said notice, but not being able to complete the same, it was continued from day to day, and time to time until the date hereof, when your commissioner begs leave to submit the following as his report:

Statement of Amount of Funds, Including the Levy of 1899, the County Court had on Hands at the Time of the Contract with Canton Bridge Company and J. V. Tully Applicable to said Contracts:

1897			
June 30.	Amount due Bridge Fund from E. A. Berry, late Sheriff of Braxton County, as per his settlement	$6340.63	
	Interest to June 30, 1898	380.43	
			$6721.06
1898			
June 30.	Credit amount paid John Adams, Sheriff by said E. A. Berry as per Adams' settlement for this year	$500.00	
			6221.06
	Interest to June 30, 1899	373.26	
			$6594.32
1899			
June 30.	Credit amount paid John Adams, Sheriff, by said E. A. Berry, as per Adams' settlement for this year	$1406.26	
	Due from E. A. Berry June 30, 1899	$5188.06	

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1899			
June 30.	Amount due Bridge Fund from John Adams, Sheriff, as per his settlement for this year	$822.09	
	Amount due County on Bridge Fund *Jun* 30, 1899	$6010.15	
	Amount of levy for bridge purposes made for the year 1899, at the July term of the County Court, for said year on total valuation of $2294131.73, at 12½c. on each $100 valuation, net	$2799.11	
	Total amount due the County June 30, 1899, including the levy of 1899		$8809.26

Statement of the Outstanding Indebtedness of the County Court, Payable Out of the Bridge Fund, at the Time of Contract with Canton Bridge Company and J. V. Tully, Computing Interest on Same to June 30, 1899:

Order County Court, November 1, 1892, allowing Tully & Kelly		$1204.66
Interest to June 30, 1899		481.66
		$1686.32
Order County Court, May 10, 1893, allowing American Bridge & Iron Company	$988.34	
Interest to June 30, 1899	364.04	$1352.38
Order County Court, January 6th, 1893, allowing American Bridge & Iron Company	$2184.97	
Interest to June 30, 1899	849.59	$3034.56
Total		$6073.26
Total amount due the County on account of the bridge fund, including the levy of 1899		$8809.26
Less total indebtedness June 30, 1899, payable out of bridge fund		6010.15
Amount applicable to Canton Bridge Company and J. V. Tully contracts		$2798.11

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Following is a *statemeent* of the amounts paid the Canton Bridge Company and J. V. Tully, respectively, on the orders or drafts issued to them under and in pursuance of said countracts, at the time of the institution of this suit:

To the Canton Bridge Company,		No.			Amount.
"	Order	452			$1500.00
"	"	345			420.00
"	"	446			315.00
"	"	512			575.00
"	"	513			500.00
			Total.....		$3310.00
To J. V. Tully	"	444	for	60.00	
			Int.	3.25	63.25
"	"	443	for	100.00	
			Int.	4.50	104.50
"	"	448	for	150.00	
			Int.	6.75	156.75

"	"	471	for	30.00	
			Int.	.90	30.90
"	"	470	for	100.00	
			Int.	3.00	103.00
"	"	349	for	400.00	
222			Int.	23.87	423.87
"	"	464			500.00
"	"	469	for	100.00	
			Int.	2.00	102.00
"	"	472	for	59.52	
			Int.	1.23	60.75
					$1545.02
To J. V. Tully, brought forward					$1545.02
"	order No.	445	for	$30.00	
			Int.	.80	30.80
"	" "	372	for	500.00	
			Int.	6.50	506.50
"	" "	594			120.00
"	" "	463			1000.00
"	" "	446			28.17
"	" "	447			95.80
"	" "	347			71.35
"	" "	350			300.00
			Total.....		$3697.64

Following is a statement of the assignments, or the order in which made, of the orders or drafts issued in pursuant of said contracts, that had been made at the time of the institution of this suit, all of which were made by J. V. Tully, or allowed to him by the court, for the use of the party named:

To F. H. Kidd, April 27, 1900, Order No. 449.....	500.00
To F. H. Kidd, April 27, 1900, Order No. 450.....	500.00
To F. H. Kidd, April 27, 1900, Order No. 451.....	500.00
To F. H. Kidd, dated April 27, 1900, and assigned about 60 days after date.....	333.18
To G. B. Fisher, on the 14th of June, 1900.....	100.00
223 To Bodkin, Fidler & Company, about June 14, 1900	100.00
	100.00
To Ruhl, Koblegard & Co., about June 14, 1900.....	200.00
To Joseph Fuccy, October 1st, 1900.....	1500.00
To Joseph Fuccy, July or August, 1901.....	1030.00
To The National Exchange bank of Weston, August 29, 1901, Draft 280.....	500.00

To The National Exchange bank of Weston, August 29, 1901, Draft 281..... 500.00
To The National Exchange bank of Weston, August 29, 1901, Draft 282..... 500
To The National Exchange bank of Weston, August 29, 1901, Draft 284..... 220.00

Following is statement of amount of Canton Bridge Company contracts:

Bridge across Oil Creek at Confluence	1125.00
Bridge across Oil Creek at Burnsville	575.00
Bridge across Taylor's Run	420.00
Bridge across Frame's Run	315.00
Bridge across Old Woman's Run	1500.00
	3955.00

Treating this $3955.00, or the amount of the Canton Bridge Company contracts as indebtedness, the County Court did not have any money on hand applicable to the Tully contract when it was made, the contract with the Canton Bridge Company having been made by order entered by the Court on the 13th day of July, 1899, and the contract with J. V. Tully on the 5th day of October, 1899.

Following is a statement of the amount of the J. V. Tully drafts, allowed by the Court on account his contracts to build abutments to bridges therein named:

December 16, 1899.
Taylor Run and Frame Run abutments,
Orders as follows:

	71.35
	50.00
	400.00
224	300.00
	300.00
	500.00
	200.00
	530.00
	$2351.77

April 27, 1900.
Old Woman's Run abutments,
Orders as follows:

338.18	
250.00	
250.00	
300.00	
500.00	
100.00	
100.00	
100.00	
60.00	
30.00	

	28.17	
	95.80	
	150.00	
	500.00	
	500.00	
	500	3797.15
July 16, 1900.		
Mouth Oil Creek abutments,		
Oreders as follows:	100.00	
	500.00	
	400.00	
	300.00	
	100.00	
	100.00	
	100.00	
	100.00	
	30.00	
225	59.52	2689.52
July 11, 1901,		
Confluence abutments	1745.00	2545.00
Order as follows:	800.00	
Total		11383.44

Jan. 3, 1901.

Your commissioner reports that from the evidence before him the contract with J. V. Tully for building the abutments to the Confluence bridge was made about the middle of August, 1900, in pursuance of an order made by the Court on the 13th day of July, 1900, all of which is respectfully submitted.

C. H. BLAND,
Commissioner.

Taxation of costs to-wit:

Commissioner 36 hours @ 75 c	27.00
E. S. Bland, taking depositions	3.00
Braxton Democrat, publishing two notices to parties	19.44
John Newlon, witness, 1d	1.00
John Adams, witness, 1 d	1.00
George Goad, witness, 1 d	1.00
	$52.44

STATE OF WEST VIRGINIA, *Braxton County, To-wit:*

I, C. H. Bland, commissioner of the Circuit Court of said County, do certify that I was actually engaged *thirtu-six* hours in examining papers, taking depositions, making calculations and writing up the foregoing report, for which the fee stated at the foot thereof is charged: that upon the completion of said report I notified the attorneys of record thereof; and *furthur* that I retained said report in

my office for ten days, for the inspection of the parties interested therein.

Given under my hand this 25th day of April, 1903.

C. H. BLAND,
Commissioner.

226 *Exceptions of Defendant J. V. Tully to Commissioner's Report.*

The defendant, J. V. Tully, excepts to the report of C. H. Bland, commissioner, filed herein, on the 25th day of April, 1903, because the commissioner reports that there is nothing applicable to the contract made between the County Court and exceptor, *refered* to as made the 5th day of October, 1899, but which exceptor claims was made on the — day of January, 1900,

First. Because the *principals* upon which said report is based are inequitable: and

Second. Because in arriving at his conclusion that there is nothing applicable to exceptor's contract, the commissioner takes into consideration two orders made to the American Bridge & Iron Company, one of January 6th, 1893, for $2184.97, and the other for $988.34, made on the 10th day of May, 1893, each of which orders is based upon a contract made by said County Court with said American Bridge & Iron Co. entered of record on the 17th day of November, 1892, copies of which orders and contracts were filed in this cause before the commissioner, and are here asked to be read as part of this exception, this contract is not enforceable because it is shown that the work is to be paid for out of future levies, it being inequitable to take from the funds of 1899, applicable to exceptor's contract moneys to pay on an illegal contract.

And exceptor suggests that the American *Briadge* and Iron Co. and the First National Bank of Grafton, its assignee of the orders aforesaid, should be made parties to this suit, because of their interest made apparent by the commissioner's report and the evidence taken before him.

This April 28, 1903.

J. V. TULLY,
By Counsel.

LINN, BYRNE & HINES,
DULIN & FOX,
Attorneys.

227 *Exhibits, Depositions, &c., Filed Before C. H. Bland, Com'r.*

Copy of report of Commissioners appointed by the County Court of Braxton County to make final settlement with E. A. Berry, ex-Sheriff of said County; together with orders appointing said commissioners.

Order.

At the County Court held for the County of Braxton, at the Court house thereof, on Friday, January 10th, 1902.

Present, Wm. J. Perrine, president, and David Evans and John Bender commissioners.

It being *nescessary* to have a *filnal* settlement with E. A. Berry, Ex-Sheriff of the County of Braxton, The Court doth appoint as commissioner, W. F. Frame to make a final settlement with E. A. Berry, and the said commissioner is hereby directed by the Court to charge the said *Bery* with interest on whatever sum may be ascertained to be due the County of Braxton from the 1st day of July, 1898, the said commissioner is directed to make said settlement as soon as is reasonable.

A copy.

Teste: E. W. HEFNER, *Clerk.*

Report of Commissioners of Settlement with E. A. Berry, Ex-Sheriff.

To the Honorable County Court of Braxton County:

By an order entered by your *honerable* body, on the 10th day of January, 1902, W. F. Frame was appointed a commissioner on the — of said Court to make a final settlement with E. A. Berry, late Sheriff of said County, by which order it was provided that said Berry should be charged with interest on whatever sum should be ascertained the County of Braxton, from the first day of July, 1898, and E. S. Bland being the Commissioner appointed by the Judge

228 of the Circuit Court of said County for the purpose of aiding in the settlement of the settlements *of the settlements* of the Sheriff of said County annually, was associated with the said Frame to make said settlement and said commissioners herewith report to the Court such settlement which is in the words and figures following:

E. A. Berry, Late Sheriff of Braxton County, in Account with same on Account of the Bridge Fund, Dr.

Balance due County on this fund at last settlement.....	$6340.63
Credit allowed as of May 12th, 1898.....	571.65
	5768.98
Interest on balance from July 1" '98 to January 5" '99..	$176.90
	$5945.88

Credit as of last date	749.88
	5196.00
Interest to July 10" 1899	$160.21
	5356.21
Credit as of last date	656.38
	$4699.83
Interest to July 25th, 1899	11.75
	$4711.58
Credit as of last date	300.00
	$4411.58
Interest to September, 1899	27.20
	$4438.78
Credit as of last date	301.03
	$4137.75
229 Interest to September 25th, 1899	13.10
	$4150.85
Credit as of last date	500.00
	$3650.85
Interest to October 7th, 1899	9.73
	$3660.58
Credit as of last date	250.00
	$3410.58
Amount brought forward	3410.58
Interest to October 28th, 1899	11.93
	$3422.51
Credit as of last date	300.00
	$3121.81
Interest to November 1st, 1899	1.56
	$3123.37
Credit as of last date	300.00
	$2823.37

Interest to November 11th, 1899	4.70
	$2828.07
Credit as of last date	256.26
	$2571.81
Interest to December 5th, 1899	10.28
	$2582.09
230 Credit as of last date	756.81
	$1825.28
Interest to December 9th, 1899	1.21
	$1826.49
Credit as of last date	1100.00
	$726.49
Interest to February 6th, 1902	94.08
	$820.57
Credit as of last date	$600.00
	220.57
Interest to March 4th, 1902	1.03
Balance to this date	$221.60

E. A. Berry, Late Sheriff, on Account of Interest Fund, Dr.

1898, July 1st, Balance due this fund last settlement	10103.61
Credit January 16, 1898	500.00
	9603.61
Interest to September 26, 1898	136.05
	$9739.66
Credit as of last date	500.00
	9239.66
Interest to October 31st, 1898	53.98
	$9293.55
Credit as of last date	250.00
	$9043.55
231 Interest to April 29, 1899	268.29
	9311.84

Credit as of last date	202.00
	$9109.84
Interest to May 12th, 1899	19.73
	9129.57
Credit as of last date	350.00
	$8779.57
Interest to June 17, 1899	51.21
	8830.78
Credit as of last date	253.57
	$8577.21
Interest to September 16th, 1899	213.00
	$8790.21
Credit as of last date	104.00
	$8686.21
Interest to January 13, 1900	168.38
	$8855.59
Credit as of last date	565.00
	$8290.59
Interest to October 3d, 1900	359.26
	$8649.85
Credit as of last date	500.00
	8149.85
232 Interest to February 23, 1901	$190.16
	$8340.01
Credit as of last date	800.00
	$7540.01
Interest to May 3d, 1901	87.96
	$7627.97
Credit as of last date	950.00
	6677.97
Interest to July 1, 1901	64.55
	$6742.52
Credit as of last date	650.00
	6092.52

Interest to March 4th, 1902	243.70
Balance to this date	$6336.22
To which balance of bridge fund as above stated	221.60
Total balance on account of both funds	$6557.82

Respectfully submitted,

W. F. FRAME,
E. S. BLAND,
Commissioners.

STATE OF WEST VIRGINIA:

BRAXTON COUNTY CLERK'S OFFICE, *April 13th*, 1903.

I, E. W. Hefner, Clerk of said Braxton County, do certify that the foregoing is a true copy of a report as is filed in this office.

E. W. HEFNER, *Clerk.*

233 *Order.*

At a County Court held for the County of Braxton, at the Court house thereof, on March 7th, 1902.

Present, Wm. J. Perrine, president, David Evans and John I. Bender, commissioners.

The Court doth allow the following claims payable out of the County fund levy of 1901:

E. S. Bland, making settlement with E. A. Berry, Ex-Sheriff	$25.00
W. F. Frame, making settlement with E. A. Berry, Ex-Sheriff	$25.00

A copy
Teste: E. W. HEFNER, *Clerk.*

A. T. TAYLOR
vs.
THE COUNTY COURT, &c.

In Chancery.

COMMISSIONER'S OFFICE, *August 7th*, 1902.

Depositions Taken Before the Undersigned Commissioner in Behalf of the Defendants.

Present: Dulin & Fox, Att'ys for the defts.

JOHN NEWLON, a witness in behalf of the defendants, being introduced, after being first duly sworn, deposes and says as follows:

Q. 1. State your age and residence?
A. Age 25, and residence, Sutton, W. Va.
Q. 2. What official position, if any, do you hold in Braxton County?
A. Deputy County Clerk.
Q. 3. Have you testified in this case? if so, when and before *whome?*
A. I have, before C. H. Bland, Notary.
Q. 4. Please examine copies of orders of the County Court,
234 and copy of draft No. 91 for $2148.97, filed in this case, and marked No. 3, and state whether it *wqs* filed by you with your deposition, and whether or not said copies are correct?
A. They were filed by me, and are correct.
Q. 5. Please examine the copies of the County orders filed in this case marked "Newlon No. 4" and state whether or not said copies were filed by you and are correct?
A. They were so filed and are correct.
Q. 6. Please examine the copies filed by you and look at County, order No. 108, payable out of levy of 1893, payable to the American Bridge & Iron Company dated May 10th, 1893, and calling for the sum of $988.34, and state for what said order was issued?
A. For part payment of Suspension Bridge.
Q. 7. Please examine County order No. 91 dated January, 1893, payable to the American Bridge & Iron Company, calling for the sum of $2184.97 and state for what said order was issued?
A. For the first payment of the Suspension Bridge at Sutton.
Q. 8. *Stqte* whether or not both the orders to the American Bridge & Iron Company were for work done on the Suspension Bridge at Sutton.
A. I suppose they were.
Q. 9. Is there any other Suspension Bridge in Braxton County? other than the one at Sutton?
A. Not that I know of.
Q. 10. Have you a copy of the order of the County Court of

Braxton County awarding the contract for the erection of the Suspension Bridge at Sutton? if so, will you please file the same?

A. I have, and here file the same, marked "Suspension Bridge order," in answer to this question.

Q. 11. To *whome* was the contract for the erection of said bridge awarded?

A. The American Bridge & Iron Company.

Q. 12. Please state whether or not County orders Nos. 91
235 & 108 calling for $2184.97, and $988.34, respectively, were issued to the American Bridge & Iron Company, for work done on the Suspension Bridge at Sutton, under the order of the County Court, filed by you in answer to question 10?

A. Yes, sir, I suppose they were.

Q. 13. I see that in copy of order No. 108, above *refered* to, there is written on the face thereof with red ink, the words and figures, "July 9, Paid." Please state what said endorsement means?

A. It means that the Sheriff got credit for it in his settlement.

Q. 14. Do you know when this order was paid?

A. It was filed by the Sheriff in his settlement for the year 1900.

Q. 15. Please examine County Order filed in this case, dated October 4, 1901, and state whether or not the County order for $2184.97, payable to the American Bridge & Iron Company, mentioned in the said order of the Court, is the same County order issued in payment of work on Suspension Bridge at Sutton, and hereinbefore *refered* to by you?

A. It is.

And *furthur* this deponent saith not.

JOHN NEWLON.

(For *exibits* marked "Newlon No. 3" see page 91.
For *exibits* marked "Newlon No. 4 see page 92 & 94 inclusive of this transcript.)

"Suspension Bridge Order."

Filed by Jon. Newlon, in Answer to Question 10, *Examination* in Chief.

Order.

At a special session of the County Court held for the County of Braxton at the Court house thereof on Tuesday, November 17th, 1892.

236 Present, J. B. Norman, president, and Wm. J. Perrine and T. J. Berry Commissioners.

G. W. Curtin, C. K. Newlon and W. E. Haymond appointed by order of this Court on the 8th day of October, 1892, to contract on the part of the Court the re-building of the Suspension bridge at Sutton, this day submitted a contract between the American Bridge & Iron Company and the County Court of Braxton County by the

said Commissioners Curtin, Newlon and Haymond, dated 12th October, 1892, by which contract the said American Bridge & Iron Company agree to furnish all material and erect complete ready for travel the superstructure of a Suspension Bridge at Sutton, W. Va., said bridge to be of about 400 ft. span, or 461 ft. tower to tower, to have roadway 12½ ft. in width, and side walks 3½ ft. in width, in accordance with plans and specifications annexed to said contract, which plans and specifications form part of the contract, the work to be commenced at once and completed within three months from date of said contract, and the County Court to pay for said work, material &c. to said Bridge & Iron Company the sum of Nine thousand Five hundred dollars, payable one third out of levy of 1892, one third out of levy of 1893, and one third out of levy of 1894, to be paid in County drafts drawn monthly to the extent of ninety per cent. of the value of work done on ground and materials *deliverd*, and upon completion and acceptance of the work of construction drafts to be issued for balance. Said drafts to bear interest from date. It is now ordered by the Court that the action of said Commissioners, G. W. Curtin, C. K. Newlon and W. E. Haymond in contracting the building of the bridge aforesaid, be and the same is in all respects by the Court approved, ratified and confirmed; and is and shall be the contract of the County Court of Braxton by the County Court of said County.

It is *furthur* ordered that said Commissioners Curtin, Newlon and Haymond, who are continued Commissioners for the purpose on the part of the County superintendent the construction of said bridge, by themselves or such person or persons, experts of engineer
237 as they may see fit to employ for the purpose, and to see that the bridge shall be built according to the said contract, plans and specifications, and upon their estimate of work and material for the monthly payments as set out, in said contract, then the drafts shall be issued as specified in the contract aforesaid by the president and Clerk of this Court, and upon report of said commissioners of acceptance of the work of construction as complete, then drafts shall issue in the manner aforesaid for the balance of contract price. Said commissioners are *furthur* empowered and authorized to remove or have removed the toll house now *standin* at the north end of said bridge, if it shall be by them deemed *nescessary* that the same be removed to have *suficient* room for construction of work or for ways for the bridge, or sell or dispose of same in such manner as they deem best.

A copy,
Teste: C. K. NEWLON, *Clerk.*

Order.

At a County Court held for the County of Braxton, at the Court house thereof on Thursday, January 3d, 1901, the Court doth order that J. V. Tully be allowed the sum of $700.00 for making fills at the Burnsville bridge near the mouth of Oil Creek, and that he be

allowed the sum of $800.00 for a part on building the abutments for the Confluence bridge payable out of the County fund levy of 1900.

A copy, .
Teste: E. W. HEFNER, *Clerk.*

A. T. TAYLOR &C.
vs.
COUNTY COURT OF BRAXTON COUNTY ET AL.

COMMISSIONER'S OFFICE, *November 5th,* 1902.

In Chancery.

Braxton County, W. Va.

Depositions taken before the undersigned Commissioner *pur-*
238 *suand* to order entered in the above styled cause to be read by the undersigned commissioner in the execution of said reference.

Thereupon came JOHN ADAMS, a witness of lawful age, who being first duly sworn, deposes and says as follows:

By VAN B. HALL:

Q. 1. State your age and residence?

A. Age 43, I reside near Sutton, Braxton County, W. Va.

Q. 2. What office if any did you hold in this County from January 1st, 1897, to January 1st, 1901?

A. The *ofice* of Sheriff.

Q. 3. State whether or not you paid any other drafts or orders issued by The County Court of Braxton County, West Virginia, in payment for *wirk* material &c. for the bridges at Old Woman's Run, at Taylor's Run, Frames Run, across Oil Creek at its mouth, and across Oil Creek at Confluence?

A. I did.

Q. 4. In whose favor were these orders drawn?

A. In favor of J. V. Tully and the Canton Bridge Company.

Q. —. Please state what orders you paid to the Canton Bridge Company?

A. I paid Canton Bridge Co. order No. 452 for $1500.00, and No. 345 for $420.00 and No. 446 for $315.00 No. 512 for $575.00, and No. 513 for $500.00. I paid orders or drafts drawn in favor of J. V. Tully for work on these bridges as follows: No. 444 for 60.00 and interest $3.25, No. 442 for $100.00 and interest $4.50, No. 448 for $150.00, and interest $6.75, No. 471 for $30.00 and interest .90 c No. 470 for $100.00 and interest $3.00, No. 349 for $400.00 and interest $23.87 No. 464 for $500. No. 469 for $100.00 and interest $2.00, No. 472 for $59.52 and interest $1.23, No. 445 for $30.00 and interest .80 c No. 372 for $500.00 and interest $6.50 No. 594 for $120.00, No. 463 for $1000.00 No. 446 for $28.17 No. 447 for

$95.80, No. 347 for $71.35, No. 350 for $300.00, and *furthur* this deponent saith not.

JOHN ADAMS.

239 (Orders or Drafts *refered* to in above deposition, see commissioner's report pages 145 and 6 of this transcript.)

NOVEMBER 7TH, 1902.

This day came GEORGE GOAD, a witness of lawful age, who being first duly sworn, deposes and says as follows:

By VAN B. HALL:

Q. 1. State your age and residence?

A. Age 52, I live at Strange Creek, in Braxton County.

Q. 2. What office, if any, do you hold in Braxton County and when did your term begin?

A. I am Sheriff of Braxton County, and my term of office commenced January 1st, 1901.

Q. 3. State whether or not you personally, or by deputy, have paid anything on the orders issued in favor of J. V. Tully and the *Canon* Bridge Company, for work and materials furnished for the Taylors Run, Frames Run, Old Womans Run, Confluence and mouth of Oil Creek Bridges?

A. I don't think we have.

And *furthur* this deponent saith not.

GEORGE GOAD.

A. T. TAYLOR
vs.
THE COUNTY COURT OF BRAXTON COUNTY ET ALS.

In Chancery.

COMMISSIONER'S OFFICE, *January 24th*, 1903.

Depositions Taken Before the Undersigned Commissioner Under the Order of Reference Made in the Above Cause.

J. V. TULLEY, being first duly sworn, deposes and says as follows:

By C. C. HINES:

Q. 1. State your age and residence?

A. I am 33 years old and reside in Sutton.

Q. 2. Are you the defendant in this cause, and the same J. V. Tully who gave your deposition in this cause on a former day?

A. I am.

Q. 3. Please state what County claims or drafts were assigned by you, if any, to *whome*, and also state to *whome* the first assignments of said claims or orders were made?

240 A. The first assignment I made was in April, 1900, to F. H. Kidd for about $1800.00 of which $1500.00 was drawn in

r of F. H. Kidd and the residue was issued in my own name. next assignment I made was $100.00, to G. B. Fisher on the 14th une, 1900, and about the same time I transferred to Bodkin, r & Company $100, and about the same time $200.00 to Ruhl, egard & Company; I transferred to Joseph Fuccy about the of October, 1900, $1500.00 and $1030.00 about July or August, ; I also transferred to the National Exchange Bank of Weston ust 29th, 1901, $1720. drafts for the Confluence bridge.

d *furthur* this deponent saith not.

J. V. TULLY.

COMMISSIONER'S OFFICE, SUTTON, W. VA.

sitions of Witnesses Taken in Behalf of Defendant, James V. Tully, on the 14th day of March, 1903.

esent, Alex Dulin, of counsel for James V. Tully, and James ully in person, and B. P. Hall, of counsel for plaintiff.

AMES V. TULLY, a witness of lawful age, introduced in his own lf, after being first duly sworn deposes and says as follows:

By Mr. DULIN:

1. Are you the defendant, J. V. Tully, in this case?
Yes, sir.
2. With *whome* did you make the contract for the erection of abutments for the bridge at Confluence in this County erected ou?
Ira H. Greathouse, president of the County Court at that time, was appointed by the County Court to let the bridge to con-
4. When did you enter into said contract with said Great-e?
I don't remember just the date, but it was sometime about the middle of August, 1900.

Q. 5. When was said abutment completed by you?

A. About the 1st day of June, 1901.

6. You may state whether or not the contract for the abutments he Confluence bridge was a separate and distinct contract from contract for the abutments to the other bridges built by you ss Taylors Run, Frames Run, Old Womans Run and the mouth il Creek?
Yes, sir, I contracted for the first bridges about the 5th of Oc-r, I think, 1899, and for the one across at Confluence in August, 0.
7. State whether or not there was any levy or the levy for any ain year designated out of which you should receive your pay the erection of the abutments of the Confluence bridge?
No, sir; I don't remember that there was.
8. Please state the amount that was due you for the work on abutments of the Confluence bridge?

A. About $2750.00.

Q. 9. How did you dispose of the residue of the amount due you after taking therefrom the amount assigned to the National Exchange Bank of Weston?

A. I transferred $1031.00 to Joseph Fuccy about the last of July or the first of August, 1901.

And *furthur* this deponent saith not.

J. V. TULLY.

COMMISSIONER'S OFFICE,
SUTTON, WEST VIRGINIA, *March 14th*, 1903.

Depositions of Witnesses Taken in Behalf of F. H. Kidd, One of the Defendants in the Above Styled Cause, on the 14th Day of March, 1893.

Present, W. E. Hines, counsel for F. H. Kidd, Alex. Dulin for J. V. Tully and B. P. Hall, counsel for plaintiff.

F. H. KIDD, a witness of lawful age, introduced in his own behalf, after being duly sworn, deposes and says as follows:

242 By W. E. HINES, Esq.:

Q. 1. State whether or not you own certain drafts against the County of Braxton, assigned to you by James V. Tully, if so, please give the date and amount of each, and the date upon which said drafts were assigned to you by said Tully?

A. I owned four drafts dated April 27, 1900, No. 549, 450 and 451, Mr. Tully gave me an order for these drafts either on the last days of March of the first days of April, 1900, and afterwards on the 27th of April, 1900, these drafts were issued for my use. They were also endorsed by the Sheriff on the 28th. I also hold a draft of $333.18, dated April 27th, 1900, which was assigned to me by J. V. Tully about sixty days after its date. I here present said drafts before said commissioner, but would rather not file the same unless *nescessary*, but ask the commissioner to make certified copies of the same, and file as part of my deposition.

And *furthur* this deponent saith not.

F. H. KIDD.

Copies of drafts Nos. 449, 450 and 451, and 436.

$500.00. No. 449.

STATE OF WEST VIRGINIA,
BRAXTON COUNTY, *April* 27, 1900.

The Sheriff will pay to J. V. Tully use F. H. Kidd, or order, the sum of five hundred dollars and — cents, allowed by special order on the 27th day of April, 1900, after deducting therefrom the amount of all State, County and other Taxes and Levies in his hands

for collection against said party, it being for account of building bridge abutments.

IRA H. GREATHOUSE, *President.*

C. K. NEWLON, *Clerk.*

General Fund.

Two other orders, Nos. 450 and 451 are in like words and figures, except as to Numbers. And No. 436 is in like words except as to amount and number, all of which are endorsed on the back thereof "Presented for payment, April 28th, 1900, John Adams, S. B. C." except No. 436 which has the *aditional* endorsement on the back thereof, "J. V. Tully."

243 Said orders are attested copies by C. H. Bland Com'r and on the face thereof in red ink, endorsed "Copy."

Orders assigned to National Exchange Bank of Weston, Nos. 280, 281, 282, are in the words and figures following, except as to Number.

280.

STATE OF WEST VIRGINIA,
BRAXTON COUNTY, *July 16th*, 1901.

The Sheriff will pay to J. V. Tully, or order, the sum of Five hundred dollars — cents, allowed by special order entered the 12th day of July, 1901, after deducting therefrom amount of all State, County, and other Taxes and Levies in his hands for collection against said party, it being for account of abutments for Confluence Bridge.

WM. J. PERRINE, *President.*

C. K. NEWLON, *Clerk.*

General Fund.

Order 284 assigned to said National Bank of Weston, is in the same words and figures, except as to number and amount, which amount is $220.00, all of which drafts are endorsed on the back thereof, "Presented to me for payment, July 29th, 1901, George Goad, S. B. C. and are also endorsed by J. V. Tully.

And now on this day to-wit: at a special term of the Circuit Court of Braxton County, continued and held at the Court house thereof, on the 7th day of July, 1903, the following decree in said cause was entered:

This cause came on this day again to be heard upon former orders and decrees; papers read on former hearings, depositions filed and report of C. H. Bland, Commissioner, filed April 25th, 1903, exceptions to said Commissioner's report, and was argued by Counsel.

On consideration whereof it is adjudged, ordered and decreed that the injunction granted in this cause by order in vacation on the 12th day of October, 1901, be, and the same is hereby made per-

244 petual in all respects, and to the full extent and for all purposes therein stated and ordered, except that the same is not to be construed as enjoining the payment to J. V. Tully of the drafts

issued to him on account of abutments of bridge at Confluence, in papers and proceedings mentioned and set out, and said injunction in so far as it affects said order is dissolved.

And it is *furthur* adjudged, ordered and decreed that the defendant, The County Court of Braxton County, and J. V. Tully do pay the plaintiff his costs in this suit.

At the instance of defendant, J. V. Tully, the operation of this decree is suspended for 90 days from this date upon his giving bond before the Clerk of this Court in the sum of $250.00 with good security and conditioned according to law.

STATE OF WEST VIRGINIA, *Braxton County, ss:*

I, J. H. Lorentz, Clerk of the Circuit Court of said County do certify that the foregoing is a true transcript of the record of the cause therein named as fully as the same appears as of record and on file in my office.

Given under my hand as Clerk, aforesaid, this 15th day of September, 1903.

J. H. LORENTZ, *Clerk.*

Clerk's fee for making this transcript, $60.30.
Teste:
J. H. LORENTZ, *Clerk.*

(Printed December 26, 1903.)
(Printer's fee for petition, record, index and cover, $146.25.)
Attest:

WM. B. MATHEWS, *Clerk.*

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(Endorsement:) State *ex Rel.* Dillon *et al. v.* County Court Braxton County *et al.* Filed as evidence on behalf of respondents in Court this 9th day of August 1906. Wm. B. Mathews, Clerk.

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III.

TAYLOR
v.
COUNTY COURT OF BRAXTON COUNTY.

Braxton County.

Decree reversed and Bill dismissed.

Poffenbarger, Judge.

1. When orders for the payment of money, issued by a county court or other municipal corporation are attacked on the ground of illegality, the burden of proof is on the plaintiff.
2. The provision of sec. 29 of ch. 39 of the Code, requiring estimates to be made and spread upon the records of county courts, before making the annual levy, does not prevent the diversion of the funds raised from the purposes mentioned in an estimate to other purposes.
3. The laying of a special levy for bridge purposes, by a county court, does not limit its expenditures for such purposes to the amount raised by such special levy, if there are other available funds.
4. The record of the settlements made by a sheriff, which does not disclose the dates of the orders paid by him, is not sufficient evidence to establish the fact that certain unpaid orders were issued in excess of the funds at the disposal of the county court at the time they were issued.
5. Collection of a fund levied by a county court will not be enjoined merely because it recites that the money is to be raised to pay indebtedness on account of a certain class of work and for the prosecution of other work of the like kind, although there are, at the time, unpaid orders for that class of work in existence.

248 POFFENBARGER, *Judge:*

On an appeal from a decree of the circuit court of Braxton County, two questions are presented. The first is whether certain county orders, issued by the county court of said county, for the construction of iron bridges and the substructures thereof, were issued in excess of the levies laid by said county court for the year 1899, and are for that reason invalid. The second is, whether a portion of the levy laid by said county court for the year 1901 is invalid.

On the 13th day of July, 1899, the county court of said county entered into a contract with The Canton Bridge Company, of Canton, Ohio, whereby it undertook to purchase and pay for five iron bridges at the prices of $1125, $575, $420, $315 and $1500, respectively, all to be completed on or before the 10th day of December, 1899. On the 5th day of October, 1899, an order was entered by said court,

awarding to J. V. Tully, the contract of building abutments for four of the said bridges at the price of $7.45 per cubic yard for stone work, one dollar per square yard for excavation for the foundations for the abutments, and $20.00 per thousand feet for the timber to be used in said foundation. This order contained this further provision: "One-half of said work to be paid out of the county fund levy of 1899, and the other one-half to be paid out of the county fund levy of 1900." On the 4th day of January, 1900, another order was made, in all respects like the one entered on the 5th day of October, 1899, except that it provided that all of the work should be paid for out of the county fund for the year 1899, and that orders should be issued as the work was completed. This change was made in order to overcome the legal objection to the contract, based on the provision for payment of part of the money, to become due on it, out of the revenues of a subsequent year. Tulley swears that, before the first order was entered, he left the court room and was not present when it was entered, and that, upon discovering its form, he applied to the county court to have it re-entered in accordance with
249 the oral agreement and understanding. In this he is supported by the testimony of two members of the county court. This pretention finds support in the fact that the court had already contracted for five bridges, while this contract with Tully was for the abutments for only four of them. He says the understanding was that he should erect the abutments for the four bridges and be paid for them out of the levies for the year 1899, and that he expected to erect the abutments for the other bridges later on and be paid for it out of the levies for 1900. Subsequently, he was awarded the contract for the substructure of the fifth bridge, performed the work and was allowed an order for it in the year 1901.

Tully was allowed, on account of his work, on December 16, 1899, the following drafts, expressly made payable out of the levy for 1899: $71.35, $50.00, $400.00, $300.00, $300.00, $500.00, $200.00 and $530.42, total $2351.77. On April 27, 1900, he was allowed drafts, on the levy of 1899, payable to himself for $333.18, $250.00, $300.00, $500.00, $100.00, $100.00, $100.00, and for the use of Amos Bright & Co. $60.00, for the use of C. B. Weidenhamer $30.00, for the use of P. J. Berry & Co. $28.17, for the use of C. C. Hawkins $95.00, for the use of Curtin & Moon $150.00, and for the use of F. H. Kidd, three drafts for the sum of $500.00 each, making a total of $3797.15. On July 16, 1900, drafts on the levy of 1899 were issued to him, amounting in the aggregate to $2689.52. These drafts were given in payment for his work on the four bridges contemplated by his first contract. Those first allowed were on account of the Taylor Run and Frame Run abutments, those allowed on April 27, 1900, on account of Old Woman's Run abutments, and those allowed on July 16, 1900, on account of Mouth of Oil Creek abutments. Drafts were issued to the Canton Bridge Company for the the contract prices of all the bridges contracted for, and $3310.00 of those drafts had been paid at the time this suit was instituted. On account of the drafts issued to Tulley and his assigns, there had been paid $3697.64.

Practically all of the unpaid orders, on account of Tully's
250 work were held by assignees. The bill prayed that the payment of all the unpaid orders on account of these contracts be enjoined.

The order of the county court made on the 10th day of July, 1901, laying the levies for county purposes for the fiscal year commencing on the first day of June, 1901, and ending on the 31st day of May, 1902, contained this clause: "The Court doth lay a levy of sixteen and two-third cents on each One Hundred dollars' valuation of real estate and personal property as assessed in this County for the *ensueing* year for the purpose of paying the indebtedness incurred in the erection of certain bridges and of erecting certain other bridges." The bill charged illegality of this part of the order on the ground that the money to be raised under it was to be applied to the payment of the alleged illegal orders or drafts, issued on account of the alleged illegal contracts made with The Canton Bridge Company and J. V. Tully.

The original bill made the county court of Braxton County, J. V. Tully, The Canton Bridge Company, F. H. Kidd and George Goad, Sheriff, parties defendant. The answer of Tully having disclosed the assignment of several of the drafts, the assignees were made parties by an amended bill. Depositions were taken, the cause was referred to a commissioner, and, upon his report, and the documentary evidence returned therewith, and filed with the bill as exhibits, and the depositions taken, the injunction awarded at the institution of the suit prohibiting the collection of the unpaid orders and the collection of the levy for bridge purposes, was perpetuated. And, from the decree, Tulley has appealed.

One ground of the alleged illegality of the drafts issued to Tully is the form of the order of October, 1899, showing that part of the work was to be paid for out of the levies of a future year. Under the principles announced in Davis *v.* County Court, 38 W. Va. 104, and Handley *v.* County Court, 50 W. Va. 439, this would invalidate the contract. But we think this defect was cured by the order subsequently entered. The claim of Tully that it embodies the true contract is not only supported by his testimony and that of
251 other witnesses, but harmonizes with the circumstances as well. That such an amendment may be made is intimated by Judge Holt, in Honaker *v.* Board of Education, 42 W. Va. 170. In that case the original contract was for the payment of one-half out of the fund of a subsequent year, but, speaking of the decree of the court below, Judge Holt said: "This could hardly have been the ground on which the circuit court based its decree, for the written contract for the purchase of the charts as amended and finally executed was entered into on the 15th day of July, 1893. One half of the seven hundred and fifty dollars—the purchase money—was to be paid on the 1st of December, 1893, and the other half on the 1st day of April, 1894, and provision was made for payment out of the school levy of the current fiscal year, that day laid by the board." The decree was affirmed upon other grounds. The allowance of the drafts for all this work treated the contract as one payable out of the

funds of the year 1899. This was a practical construction of the contract by the parties, antedating the suit to impeach it.

Invalidity of these orders is predicated also upon the charge that, at the times at which the contract was made and the orders issued, the funds in the hands of the court derived from the levies of previous years and levied for the current expenses of that year were insufficient to pay the obligations imposed by the contract. The evidence adduced in support of this claim consists of the record of the settlements made by the sheriff of the county with the county court for the years, 1897, 1898, 1899 and 1900, showing that the levies for those years, for county purposes and bridge purposes, except a balance of $287.95, had been disbursed. The evidence, of course, precludes the possibility of any undisbursed funds in the hands of the sheriff, sufficient in amount to pay the outstanding orders. From this fact it is argued that the contracts must have been made without sufficient funds in hand and levied to pay the amounts to become due upon them. The commissioner, however, based his report
252 upon a different test. His construction of the decree of reference was that the inquiry was to extend only to the state of that part of the county fund which had been designated as the bridge fund. He ascertained that there was in the hands of a former sheriff, at the time the contracts were made with the Bridge Company and Tulley, money belonging to that fund which, together with the interest thereon, amounted to $6010.15, and that the levy for the year 1899 amounted to $2788.11, making a total of $8809.26. He then charged up against this amount three old orders issued in the years 1892 and 1893, amounting in the aggregate, principal and interest, to $6073.26, which he deducted from the $8809.26 as indebtedness against that fund, leaving an available surplus of $2736.00, applicable to the contracts made with the Bridge Company and Tulley. This report was excepted to for two reasons; first, because the basis of the statement of the account was wrong, the inquiry having been confined to only a part of the county's funds; and second, because the old orders charged up against the bridge fund were invalid on their faces, it being charged that they had been made payable out of the revenues of years subsequent to the years in which they had been issued. The decree recites that the cause was heard upon the commissioner's report and the exceptions thereto, and argued by counsel, but it does not show that any disposition was made of the exceptions of the report, for they were ignored and the injunction perpetuated. Hence, but for an extract from the opinion of the trial judge given in one of the briefs, it might be assumed that the decree stands, not upon the commissioner's report alone, but upon all the evidence in the case.

The report of the commissioner and the decree stand upon the erroneous assumption that the only funds applicable to the contracts were those classed by the county court as bridge funds. Section 25 of chapter 43 of the Code authorizes payment of the cost of construction of bridges out of the county treasury and does not require a separate fund to be raised and the expense of bridge construction

to be limited to the amount thereof. Section 29 of chapter
253 39 of the Code, prescribing the mode of laying the annual levy, requires an estimate of the amounts which will probably be required for the expenses of the current year to be made and entered upon the record, but there is no requirement that the funds for the several purposes shall be kept separate and the expenditures for the several purposes limited to the estimated amounts shown. The estimate may be a pre-requisite to a valid levy, it being a safe-guard against extravagance and recklessness in raising money from the people and expending it, but after the funds have been properly levied, they may be used for any proper county purpose. A contemplated improvement may be abandoned, for good cause, or the estimate, though honestly made, may be larger than is necessary, in consequence of which there may be a surplus. Under such circumstances, these funds may unquestionably be used for other purposes. Aside from this, however, there is neither an express nor an implied mandate in the statute that funds properly raised shall be applied to the purposes mentioned in the estimate. Such a requirement would result in great inconvenience, because the exigencies arising from time to time, calling for expenditures of public money, and producing deficits in some estimated funds and excesses in others, are so numerous and impossible of accurate anticipation, that the county court would often find itself with ample means, but, nevertheless, in financial distress. The adequacy of the bridge fund alone to meet the amounts likely to become due on the bridge contracts does not, therefore, support the finding that the orders were illegally issued.

The only other evidence in the record, which might be supposed to do so, is the record of the settlements made by the sheriff for the years, 1897, 1898, 1899 and 1900. This shows that all the funds except the small balance of less than $300.00 have been disbursed; but the dates of none of the drafts paid appear from this record. Only the aggregate amounts paid and returned by the sheriff are shown. They do not indicate in any way or to any extent the financial condition of the county at the times at which the con-
254 tracts were made and the drafts issued. Before he can enjoin payment of the orders, the plaintiff must establish their invalidity. The records of the court were open to him. If they have been properly kept, they show the date and amount of every order issued against the levies and funds then at the disposal of the court, and their production would have disclosed the aggregate amount of prior issues, and the condition in prior years could also have been ascertained from the records. Instead of bringing evidence which would have disclosed the status of the fund at the date of the alleged contract, he has come with records which have no bearing upon the vital issue. Hence, he fails to sustain the burden of proof which the law has imposed upon him. Armstrong *v.* County Court, 41 W. Va. 602.

Should the collection of the levy for bridge purposes have been enjoined? The order says, on its face, the money is to be used, in part, for the payment of indebtedness. Does this con-

clusively show the illegality of the purpose for which the money is to be used when raised? Shall it be said that the word indebtedness cannot be a misdescription of the demands which the court intended to satisfy out of the levy? The evidence shows there were outstanding drafts of a former year which the court no doubt intended to pay out of this levy, but they are not necessarily debts in the legal sense of the term. Though it may not be permissible to levy taxes, in one year, to pay drafts drawn in excess of the levies of a former year, as claimed by counsel for the appellee, if the drafts of the former year have not in fact been so overdrawn, but the funds, provided for their payment, have been disbursed in payment of proper drafts upon the funds of a subsequent year, and the funds of the subsequent year, thus left undisbursed upon the drafts of that year, have been absorbed by payment of valid drafts drawn in the third year, and so on, there may be, at all times, outstanding drafts, which constitute an apparent, but not a real, charge on the funds of subsequent years, but payable out of the same because the
255 funds of the previous year have been absorbed in the payment of valid drafts issued in a subsequent year. If, therefore, these unpaid bridge orders were brought to the attention of the county court at the levy term, 1901, and the reference in the order is to them, as is claimed, the mere designation of them as indebtedness is not necessarily an admission of their illegality, nor does it establish the fact of indebtedness.

The untenableness of the position taken by counsel for the appellee lies in this, that the record of the sheriff's settlement, the only evidence adduced, is palpably uncertain, and therefore, unsatisfactory, and inconclusive, evidence of the financial condition of the county at any given date. It shows the dates of none of the drafts paid, but, only the aggregate amounts. Thus, the settlements show the following credits for drafts paid out of county and bridge funds: 1897, $8614.04; 1898, $14195.01; 1899, $11230.84; 1900, $18710.50. When, and upon what levies, these drafts had been drawn, is in no way indicated by these copies of the records of the settlements. What amount of the orders drawn in 1900 may have been paid out of the levy of 1899, or taken by the sheriff on the taxes for the year 1899, to the displacement of orders which should have been paid out of the levies for 1899, cannot be ascertained from these copies of the record of the sheriff's settlements. Had the dates and the amounts of the orders paid been shown, the evidence would have come up to this point, and would, or would not, have shown that these orders had not been displaced, according to the fact. Will the court supply this defect in the evidence by a presumption? What principle of law demands that? How can it be done in the face of the laxness and want of system in the method of tax collecting and disbursement disclosed by the statutes themselves? The sheriff is the collection and disbursing officer. His place of business is wherever he happens to be,—on the streets, on country roads, in the fence-corners, and on the bridle paths leading up the hollows and over the hills, and his desk a pair of saddle-bags. He receives

and pays out money everywhere without any possible way of
256 keeping funds separate or determining whether he is paying drafts in the order of their issue, and takes county and school orders and drafts in payment of "taxes, county and district levies, militia fines and officer's fees," under the mandate of the statute. Code ch. 41 § 16. He is beset on all sides by some holders of orders importuning payment, while others in easier circumstances withhold their orders as a sort of safe investment. How can there be any presumption of regularity in the respect indicated in view of this utter lack of system and regularity, imposed by the law itself?

Another view of this order so limits the reference, however, that it does not necessarily reach the drafts, which the plaintiff seeks to enjoin. In order to make it invalid on the ground that its purpose is to pay them, even if it be conceded that their illegality is established it must appear that there is no legal indebtedness to which the reference can attach. But an order for $1745.00 for work completed on June 1, 1901, within the year, was allowed on the next day after the levy was laid. This was in a sense indebtedness. It was a demand for work completed in advance of the levy and there may have been other similar demands, to be satisfied. It is shown, in an attempt to prove the order illegal, that no bridges were built after the levy of 1901, but that does not preclude the intent to build them when the levy was laid. This suit was brought soon after that date and long before the depositions were taken. Procedure with contemplated work in the face of an injunction to cut off the funds for payment would have been an exhibition of extreme temerity and recklessness.

There is no evidence of fraud on the part of the members of the court, the bridge company, or Tully. The work was probably more expensive in character than was necessary, but it seems to have been well and honestly executed at fair and reasonable prices. The effort to impeach the drafts and the levy order on the ground of bad faith has completely failed and nothing is seriously urged except the matters already disposed of.

257 It is not necessary, in this case, to construe the constitutional provision, forbidding the creation of public indebtedness except in the manner therein prescribed. Whether an order, issued in excess of the levy actually laid, but within the amount which the court has the power, under the constitution and statutes, to levy, creates a debt, within the meaning of the constitution, is not decided. Nor does the case involve the principles declared in Spillman *v.* Parkersburg, 35 W. Va. 605, Davis *v.* County Court, 38 W. Va. 104, and Hanly *v.* County Court, 50 W. Va. 439. The evidence fails to make a case calling for the application of those principles.

For the foregoing reasons, so much of the said decree as in any way relates to, impairs the validity of, or affects, any of the said orders issued to J. V. Tulley or his assignees or the said levy for bridge purposes, will be reversed, and so much of the bill as relates to the said orders and levy will be dismissed with costs to the appellant in the court below as well as in this court.

Attest: WM. B. MATHEWS, *Clerk.*

258 IV.

TAYLOR
v.
BRAXTON COUNTY COURT.

BRANNON, President, concurring:

My opinion is, that the two sections, 7 and 8, of article 10 of the Constitution have different objects. The object of section 7 is to limit the annual assessment by county authorities to 95 cents per $100 valuation; while section 8 has for its object to limit the power to incur debt and to prescribe the only mode in which debt can be incurred. It does seem to me that when secton 7 says that no more taxes shall be assessed in one year than 95 cents on the $100, it means that no more *expenditure* shall be made than to that extent. It therefore does not mean that if the county levy too little to pay expenditures in a given year, a lawful expenditure or contract of that year, or a draft for it, is void, if there be yet room for it between the per cent. of actual levy and the 95 cents. Provision may be made for its payment, so it and all antecedent allowances do not exceed the 95 per cent. An allowance, a draft, a contract made for an expenditure of that year, so that it and antecedent ones do not overgo the 95 cent limit, is not void, and this is simply because section 7 allows expenditure up to that 95 cents. A contract or allowance made for expenditure of that year when antecedent expenditures overgo the limit is void; if that and those antecedent expenditures do not overgo that limit, it is not void. Those passing that limit incur a debt contrary to section 8; those that do not overgo that limit are valid under section 7, and are not debts under section 8, and do not violate section 8. If a contract, or an order under it, is valid when made, it is not void simply because the levy may not reach it. See in List *v.* Wheeling, 7 W. Va. 523; Armstrong *v.* County Court, 41 W. Va. 602; Hanley *v.* County Court, 50 W. Va. 439. If one or more drafts be illegal, shall they taint all made before during the fiscal year? It does not appear in this case whether this contract and drafts under it were, when made, in excess of the amount which could be raised by the 95 cent levy. I am not saying that a contract can be made payable in installments of different years.

I do not differ with Judge Poffinbarger in the reasons he gives why the injunction cannot be sustained.

Attest:

WM. B. MATHEWS, *Clerk.*

259 (Endorsement:) Filed in open Court as evidence on the part of the Respondents, Aug. 9, 1906. Wm. B. Mathews, Clerk.

260 V.

Financial Statement of Braxton County to July 1, 1906.

County Claims:

G. G. Lovett, Md. ser. paupers		3.00
Same	"	51.00
Same	Md. Ser. Lunatics	12.50
Same	Md. Ser. paupers	14.00
Same	"	4.50
Same	"	50.00
W. P. King, Md. Ser. prisoners		3.00
Koontz & Walsh, use Mrs. S. M. Woods		50.00
Same	" " "	35.00
Same	" " "	20.00
H. S. Quickle, overseer poor		16.00
Light Fuel & Power Co. gas		51.00
L. W. Martin, drugs paupers		8.15
W. P. Bartlett, coffin pauper		5.00
Johnson & Watson, deed books e-c		180.90
E. W. Hefner, stamps and express		16.14
The Burnsville Pharmacy drugs paupers		5.75
J. L. Rhea, goods pauper		1.00
Verna Ellison, nurse pauper		4.70
Hines & Kelly, def. Ed. Dillian		30.00
Hugh Amos, Phone service		20.00
Globe Printing & Binding Co.		8.20
J. E. Perkins, Constable costs		8.20
P. J. Berry, goods paupers		15.74
Pounsford Stationery Co., Stationery		7.40
J. R. Giver, sur. Poor Farm		9.00
Polly Simmons, nurse pauper		4.00
A. C. Hosey, coffin pauper		5.00
Frederick Brady, 2 coffins paupers		12.00
McMillian & James, plumbing		13.30
	The Robert Mitchell Furniture Co.	39.70
261	J. E. Perkins, Constable costs	38.00
	Braxton Hardware Co., sash C. H.	1.00
David Heater, nurse poor		13.25
S. E. Brown, nurse pauper		3.00
M. B. Squires, md. at. poor		8.75
Elk Store Co. goods poor		5.00
W. G. Hyer, conveying prisoner		9.45
C. A. Gribble, Constable costs		1.20
C. A. Gibble, Constable cost		1.50
Same,	" "	.60
Same,	" "	1.90
Same,	" "	1.70
S. E. Brown, nurse pauper		5.00
I. T. Cartwright & Son, goods poor		4.23
Smith Premium Co. chair		5.00

J. E. Baughman, Justice costs			5.40
Same,	"	"	3.95
Same,	"	"	3.75
Same,	"	"	6.65
Same,	"	"	4.90
Same,	"	"	5.50
Same,	"	"	3.10
Same,	"	"	3.10
Same,	"	"	3.10
Same,	"	"	1.55
Same,	"	"	4.70
Same,	"	"	3.95
Same,	"	"	1.55
Same,	"	"	5.85
Same,	"	"	6.40
Same,	"	"	4.80
Same,	"	"	1.80
Same,	"	"	5.65
Same,	"	"	4.50
262 J. R. Given, witness			2.00
Clark Cogar, witness, use Curtin-Moon Co.			3.20
Luther James,	"	"	3.10
Mrs. Luther James,	"	"	2.10
J. P. Hosey,	"	"	2.80
Luther James,	"	"	1.10
Job F. Thayer,	"	"	2.00
Dick Thayer,	"	"	1.00
Ab. Ratcliff,	"	"	2.10
W. B. Fisher,	"	"	1.00
John Carpenter,	"	P. J. Berry	2.20
Ida Greene,	"	"	2.10
P. B. Carr,	"	"	2.80
James Hosey,	"	"	2.80
Jake Cutlip, witness, use P. J. Berry			2.80
Cecil Hawkins, " " J. Skidmore			1.00
J. P. Cutlip, " " "			3.60
B. Paugh, " " "			4.00
L. J. Burrough, " " "			4.00
Jake Hosey, " " "			2.80
Bill Linger, " " "			1.30
Jake Hosey, " " "			4.50
F. W. Barnett, " " "			4.20
P. G. Cutlip, " " "			3.20
Cary Wright, " " "			3.20
J. P. Cutlip, " " "			3.20
Mag. Hosey, " " "			2.80
Samuel Springston, " " "			2.80
Mrs. W. W. Lake, " " "			3.00
Same, " " "			3.00
Clark Hosey, " " "			3.20
Samuel Springston, " " "			2.80
Ed. Dillion " " "			1.00

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Stanton Rogers,	use J. Skidmore				2.
L. M. Roby,	"	"			4.
Jesse Hosey,	"	"			9.
Geo. D. Browning,	"	"			4.
J. W. Jones,	"	"			4.
J. R. Detherage,	"	"			3.
John F. Posey,	"	"	Geo. Goad		4.
Eliza Henline,	"	"	"		4.
Jack Perrine,	"	"	"		3.
Loyd Trough,	"	"	"		5.
P. C. Cutlip,	"	"	"		6.
Kester Budget,	"	"	"		12.
Dick Thayer,	"	"	"		8.
Mrs. J. D. Strange,	"	"	"		3.
Roy Corbitt,	"	"	"		2.
Cora Henline,	"	"	"		3.
Same,	"	"	"		6.
John Henline,	"	"	"		6.
Estella Godfrey,	"	"	"		4.
Clara Henline,	"	"	"		6.
Coy Henline,	"	"	"		4.
Same,	"	"	"		3.
Eliza Henline,	witness, use Geo. Goad,				7.
Same	"	"	"	"	3.
Anderson Strange,	"	"	W. E. Haymond, Admr.		1.
W. B. Fisher,	"	"	"		5.
Same,	"	"	"		1.
Henry Canfield,	"	"	"		1.
G. B. Armstrong,	"	"	"		2.
R. P. Carr,	"	"	"		3.
H. W. Samples,	"	"	"		18.
E. G. Rider,	"	"	"		2.
John Adams, Sh'ff's costs					10.
F. M. Gibson, Jailor fees					32.
G. R. Gibson, Justice, lunacy costs,					4.
264 J. C. Berry,	Jury Com'r,				10.
Henry Bender,	"	"			10.
C. E. Maher,	witness, use Geo. Goad,				2.
Ed. Dillion,	"	"	"	"	1.
M. B. James,	"	"	"	"	2.
Same,	"	"	"	"	5.
Sarah Loyd,	"	"	"	"	1.
B. F. Loyd,	"	"	"	"	1.
P. B. Carr,	"	"	"	"	2.
Mary Henderson,	"	"	"	"	2.
J. M. Facemire,	"	"	"	"	1.
J. M. Lemon,	"	"	"	"	1.
Job F. Thayer,	"	"	"	"	1.
Seth Walker,	"	"	"	"	6.
Norm Dillion,	"	"	"	"	1.

Charley Cutlip,	witness,	use	Geo.	Goad	.....	6.40
R. T. Peppers,	"	"	"	"	.....	3.60
Dave Boggs,	"	"	"	"	.....	3.30
J. S. Kinceley,	"	"	"	"	.....	3.90
Norm Dillion,	"	"	"	"	.....	2.00
J. W. Barnett,	"	"	"	"	.....	2.00
Louisa Mace,	"	"	"	"	.....	3.50
Ethel Berry,	"	"	"	"	.....	3.30
Bess Henderson,	"	"	"	"	.....	2.00
Sarah Loyd,	"	"	"	"	.....	3.00
B. F. Loyd,	"	"	"	"	.....	3.00
Arch Singleton,	"	"	"	"	.....	2.20
Levi Humphreys,	"	"	"	"	.....	2.00
John Demastus,	witness,	use	Geo.	Goad,	.....	2.30
Arch Singleton,	"	"	"	"	.....	3.20
Same,	"	"	"	"	.....	1.00

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Sarah McCumbers,	witness,	use	Geo.	Goad,	.....	3.50
J. A. McCumbers,	"	"	"	"	.....	5.50
John McCumbers,	"	"	"	"	.....	5.50
Robert Williams,	"	"	"	"	.....	4.00
Sarah McCumbers,	"	"	"	"	.....	4.50
T. A. Losh	"	"	"	"	.....	10.60
Ode Wendell,	"	"	"	"	.....	2.10
Ed. Boggs,	"	"	"	"	.....	1.60
D. L. Pulliam,	"	"	"	"	.....	3.20
Dennis Kane,	"	"	"	"	.....	3.50
Anderson Stump,	"	"	"	"	.....	3.30
Charley Cutlip,	"	"	"	"	.....	1.40
Harvey Frame,	"	"	"	"	.....	1.00
Net Wilson,	"	"	"	"	.....	2.80
M. B. James,	"	"	"	"	.....	2.70
S. E. Boggs,	"	"	"	"	.....	3.50
J. M. Stewart,	"	"	"	"	.....	3.50
Jno. Layfield,	"	"	"	"	.....	2.00
Ab. Ratcliff,	"	"	"	"	.....	1.40
Same,	"	"	"	"	.....	2.30
M. B. James,	"	"	"	"	.....	2.70
Mary Henderson,	"	"	"	"	.....	2.00
Ben Henderson,	"	"	"	"	.....	2.00
Bess Henderson,	"	"	"	"	.....	2.00
E. A. Jamison,	"	"	"	"	.....	3.50
Evert Frame,	"	"	"	"	.....	3.70
J. M. Hamric,	"	"	"	"	.....	2.50
Willis Keener,	"	"	"	"	.....	1.90
C. E. Bragg,	"	"	"	"	.....	2.60
Same,	"	"	"	"	.....	7.60
Cecil Young,	"	"	"	"	.....	2.00
Okey Perkins,	"	"	"	"	.....	2.60
H. A. Post,	"	"	"	"	.....	1.70

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Luther Carder, witness, use Geo. Goad	1.30
Harold Holy " " " "	.50
John Starbuck, " " " "	1.20
J. H. Wilcox, " " " "	2.50
W. R. Nutt, " " " "	1.70
Ben Banks, " " " "	1.70
Jennie Thayer, " " " "	1.00
T. H. Harden, " " " "	.50
D. C. Koontz, " " " "	.50
M. F. Corley, Sp. Constable costs, use Geo. Goad	3.40
A. M. Canger, constable costs, " " "	2.00
C. F. Harden, Justice costs, " " "	3.75
C. A. Gribble, Constable costs, " " "	1.30
Same, " " " " "	5.70
Same, " " " " "	5.70
A. M. Canger, " " " " "	4.80
C. A. Gribble, " " " " "	10.20
J. Arthur Pierson, Justice costs, " " "	3.35
M. F. Corley, Sp. Constable costs, " " "	1.00
C. A. Gribble, Constable costs, " " "	5.40
J. Arthur Pierson, Justice costs, " " "	1.85
C. A. Gribble, Constable costs, " " "	2.60
J. Arthur Pierson, Justice Costs, " " "	4.60
Same, " " " " "	1.85
Same, " " " " "	1.60
Same, " " " " "	4.90
Same, " " " " "	1.85
Same, " " " " "	1.85
Same, " " " " "	2.60
Same, " " " " "	1.60
Same, " " " " "	2.60
Same, " " " " "	5.70
Same, " " " " "	2.85

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J. Arthur Pierson, Justice costs, use Geo. Goad	2.60
Same, " " " "	4.60
Same, " " " "	5.00
Same, " " " "	2.85
J. E. Baughman, " " " "	3.95
Same, " " " "	4.55
C. A. Gribble, Constable Costs, " "	2.00
Same, " " " "	3.20
Same, " " " "	3.55
Same, " " " "	4.50
M. F. Corley, " " " "	12.00
M. F. Corley, Sp. " " " "	2.00
Same, " " " "	8.25

M. F. Corley, Sp. Constable Costs, use Geo. Goad	17.00
A. M. Canger, " " " " "	14.72
Same, " " " " "	5.60
Same, " " " " "	17.65
Same, " " " " "	11.00
R. M. Johnson, Sp. " " " " "	3.30
L. D. Perkins, Conveying prisoner, " " "	5.70
J. H. Dilly, Constable costs, " " " "	11.50
Lee Boon, Witness, " " " "	.90
Bess Henderson, witness, " " "	.50
Meletus Barnett, Sp. Constable costs, " "	3.00
W. G. Hickle, Sp. messenger, " " "	9.45
G. L. Bright, constable, conveying lunatic " "	19.07
Same, " " " " "	19.07
M. F. Gibson, Con. prisoners, " "	12.01
Geo, Goad, Conveying lunatic	19.76
Same,	9.92
Fleming Wine, witness, use Geo. Goad	.50
W. E. Hacker, " " " "	1.00
Chas. Cutlip, " " " "	.90
W. H. Lee, goods court house & jail,	26.42
268 Ivy Green, witness	2.00
J. W. Mayse, tax bills, & express	7.95
Samuel Perrine, express	2.40
Braxton Democrat, pub. del. list etc	74.10
W. R. McElwain, election booth	8.00
Braxton Central, Pub. del. list	42.90
A. M. Beall, lumber bridge	8.96
John Bee, painting bridge	10.00
Estella Godfrey, witness, use E. W. Hefner	3.20
Same " "	7.40
John Thayer, witness, " A. L. Morrison	1.80
Hessie Martin, " " "	2.10
W. B. Fisher, witness	3.00
Same, "	1.00
M. F. Corley, "	2.00
Henry Perrine, " " E. B. Duffield	1.20
W. S. Teter, " " Same,	4.00
H. P. Hudkins, "	1.80
C. E. Timsey, " " H. H. Jackson	5.90
V. Horner, " " S. S. Stonestreet	2.80
Mark Hamric, witness, use S. S. Stonestreet	2.80
John M. Stout, "	3.00
Milton Butcher, "	4.40
W. D. Krafft, "	3.80
J. E. Brown, " use John Adams	2.00
C. J. Hosey, " " "	9.80
Jesse Crites, " " "	8.30
Will Cutlip, " " "	6.40
Sarah Loyd, " " "	1.10
Ben Loyd, " " "	1.10
Anderson, Strange, " "	3.60

Homer Dillion, witness, use John Adams	2.00
J. W. Johnson " " "	10.00
Sarah Crews, " " "	1.20

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Luther Hosey, witness, use John Adams	3.80
Andy Dean, " " "	4.30
Mrs. W. W. Lake, " " "	4.00
C. W. Talbott, Jailer, Lewis Co.	406.05
W. W. Lake, witness, use John Adams	4.00
The Gohun Mfg. Co. paint	23.40
W. E. Williams, painting bridges	71.50
H. J. Loyd, paint for bridge	3.25
O. O. Eakle, reporting births & deaths	2.25
R. J. Brown, same	3.50
L. L. McKinney, same	4.25
G. G. Lovett, same	8.75
Columbia A. Given, same	1.25
J. C. Wade—same	2.25
M. S. Harris, same	.75
J. A. Burk, same,	.25
E. J. Davisson, same,	1.25
J. W. Smith, same	3.25
J. W. Berry, same	10.00
Sis Butcher, same	2.25
Jas. A. Butcher, same	7.50
J. W. Kidd, same	.75
Emily S. Dobbins, same	3.25
M. S. Squires, same	6.75
H. M. Bourn, same	2.25
Emma D. Given, same	.50
E. P. Rook, same	.50
M. T. Morrison, same	5.75
Same, Md. ser. paupers	15.00
Same, ser. pres. Bd. Health	75.00
O. O. Eakle, Md. serv. pauper	15.00
Same, " " poor farm	75.00
Same, " " Alex. Henry	19.00
Same, " " Isaac Carpenter	3.00

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J. Arthur Pierson, Justice costs, use Geo. Goad	2.40
H. C. Brown, Juror inquest	2.00
R. G. Linn, Asst. Pros. Chris. Bickle	50.00
John Henry, witness	2.00
J. W. Smith, Md. ser. Putnam boy	10.00
E. W. Hefner, making land book, 1905	400.00
W. F. Davis, Ser. Frametown bridge	83.00
John O. Boon, guard, use Geo. Goad	259.79
John Adams, making settlement Shff.	20.00
Fred. L. Fox, same,	20.00

Arnold C. Scherr, deaf & dumb	121.60
E. W. Hefner, rep. births & deaths	14.15
W. B. Golden, Justice costs	2.65
Same, Same,	3.80
Same, Same,	3.60
N. Van Wilson, Justice costs	9.00
A. J. Hyer, arresting Worthy Edwards & *al.*	13.70
W. K. Bender, burial goods paupers	17.49
C. A. Gribble, conveying prisoner	5.70
W. R. Pierson, witness	2.00
J. H. Finnegan, Constable costs	5.50
W. H. Lee, goods for court house & jail	13.15
J. Arthur Pierson, Justice costs	1.85
Same, "	2.85
" "	2.60
A. M. Canger, "	1.00
J. P. Canfield, guard	1.00
J. E. Perkins, constable costs	5.80
Same, "	4.28
" "	8.65
C. A. Gribble, "	1.20

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C. A. Gribble, constable costs	1.20
T. B. Frame, coffins paupers	9.00
S. S. Shields, witness, use C. E. Bragg	3.00
J. O. Boon, Sp. constable costs	7.15
C. A. Gribble, " "	12.00
Same, " "	4.10
A. M. Canger, " "	19.40
G. B. Armstrong, Justice costs	3.40
L. A. Koontz, Med. ser. Sam. Knight	6.00
Samuel Perrine, assessor ex. levies	141.31
J. W. Mayse, assessor, same	154.18
Huffman & Long, goods paupers	4.05
M. B. & W. H. James, correcting state levy	50.00
M. F. Corley, Sp. Constable, inquest	8.00
F. M. Gibson, conveying prisoner	5.70
Same, boarding prisoners	9.00
The Garland Refining Co. paint	30.25
A. M. Canger, Constable costs	46.54
J. R. Sirk, Justice costs	5.00
Jacob Huffman, freight on paint	9.45
Dr. W. P. King, Med. ser. prisoners	17.00
Cornell Art Metal Co. furniture	248.08
Lea Latham, services stenographer	10.12
J. E. Perkins, arresting Thos. Raine	.60
M. F. Corley, guard	1.00
H. B. Hurst, witness	3.10
G. B. Armstrong, Justice, inquest	5.00
T. E. Jeffries, constable same	3.00

U. G. Tremble, Juror, same	2.00
H. H. Coberly, Juror, "	2.00
W. S. Hoover, Juror, "	2.00
W. P. Brosius, Juror, "	2.00
E. S. Greathouse, " "	2.00
P. S. Posey, Juror, "	2.00

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G. H. Butcher, witness same	3.00
D. S. Urbach, " "	.90
J. S. Sprinkle, " "	.60
L. L. McKinney, Ser. Same	5.00
J. R. Hugert, " "	5.00
Orman Randolph, taking testimony same,	2.25
R. T. Coleback, Sp. Constable costs	19.55
Bud Criner, witness	1.30
J. A. Dean, " use A. M. Canger	2.75
John Sponangle, " "	1.60
P. J. Boggs, witness,	3.00
T. J. Boggs, same	3.00
A. M. Canger, Ar. W. F. Mayberry &c	7.90
J. B. McLaughlin, listing del. tax bills	9.62
Elliott Fisher Co. typewriter Cir. Clerk	175.00
Koontz & Walsh, Med. ser. Butler girl	18.00
A. M. Canger, witness,	2.40
J. E. Baughman, Justice costs	3.05
Same, " "	7.10
Same, " "	2.55
Same, " "	2.40
Same, " "	1.60
Same, " "	3.05
Same, " "	4.40
Same, " "	3.65
Same, " "	8.45
Same, " "	6.85
Same, " "	3.20
Same, inquest Luther Wright	5.00
W. E. Weaver, painting bridge, use A. L. Morrison & Bro.	32.60
W. R. Beatty, same, use Mrs. D. J. Arnold	3.00
W. Huffman, same	16.20
J. P. Eagle, same	12.60
H. Canfield, same	20.00
273 F. M. Gibson, cleaning court house	25.00
Light Fuel & Power. gas	11.20
E. W. Hefner, index trust deed books	277.17
James Wyatt, witness	.90
Braxton Democrat, financial statement, etc	96.00
John I. Bender, on salary	50.00
E. H. Cunningham, same	50.00
Samuel Perrine, same	38.00

	Same, Same	33.00
	Same, Same	254.00
	C. H. Bland, Same	25.00
	W. C. Smallridge, keeping Geo. Nelson	15.00
	L. M. White, on salary	90.00
	E G. Rider, same,	200.00
	C. H. Bland, same	150.00
	E. W. Hefner, Same	50.00
	John Adams, Same	200.00
	C. F. Greene, def. Mary Henderson	20.00
	T. S. Gerwig, goods paupers	11.94
	J. L. Fox, special messenger	6.15
	Braxton Democrat, blanks, cle-ks offices	24.45
	O. O. Eakle, med. sers. Wm. Criss	58.45
	Light Fuel & Power Co. gas,	40.20
	J. O. Boon, Sp. messenger	6.00
	Braxton Hardware Co. stoves	48.85
	H. H. Boggess, by order cir. ct.	63.85
	M. T. Morrison Med. ser. Wm. Criss	20.00
	A. L. Morrison & Bro. goods paupers	5.75
	Johnson & Watson, stationery cl-ks offices	90.00
	C. W. Talbott, Jailor, keeping prisoners	120.50
	E. W. Hefner, stamps & express	21.55
	S. S. Stonestreet, overseer poor	9.00
	Homer Dillion, 3 da. at Tunnel order Pros. Att'y	3.60
	J. R. Johnson, Sp. messenger	5.60
274	F. M. Gibson, jailer, con. prisoners	29.95
	M. D. Shaver, keeping Mrs. Tingler	17.50
	T. M. Walsh, Med. ser. Guy Fulks	15.00
	Mintie Duffield, keeping paupers	25.00
	Elizabeth Wilson, nurse Sarah Lane	9.00
	Dr. Butcher, Med. ser. same	15.00
	C. M. Rhea, con. pauper use H. S. Quickle	2.50
	H. S. Quickle, ser. overseer poor	5.00
	Mrs. James Perkins, keeping Sarah Lane	7.00
	I. L. Odell, Med. ser. Lee Coulter	35.00
	Pounsford Stationery Co. Stationery e-c	44.16
	Acme Publishing Co. Same	20.85
	John Adams, Rep. book & tax rec-pts	24.75
	Dave Gibson, Sp. Messenger	7.25
	Hines & Kelly, def. Rannie Dillion	20.00
	A. B. Williams, 3 days Tunnel or. Pros. Att'y	3.60
	C. A. Gribble, constable cost	2.20
	Same, " "	.60
	Same, " "	.60
	L. N. Dobbins, Justice costs	1.10
	Same, "	1.10
	Same, "	4.00
	M. V. Carney, " lunacy	5.50
	Dr. J. W. Kidd, Ex. lunatic	5.00
	Ervin Conrad, Sp. Constable & guard	12.99

	Clay woods, guard same	6.50
	I. B. Fox, witness same	.50
	W. H. Lee, goods court house	4.83
	J. W. Friend, Juror inquest L. Wright	2.00
	W. E. Weaver, painting bridge, use A. L. Morrison,	17.65
	Same, " " " J. I. Bender	5.00
	Ward Huffman, " " "	18.00
	H. Canfield, " " " W. W. Dufield	12.45
275	J. P. Eagle, painting bridge	22.95
	Mrs. F. A. Hughes, boarding hands painting bridges	4.50
	C. M. Mollohan, same	4.40
	Lea Latham, Stenographer	71.89
	J. R. Sirk, Justice costs	3.35
	J. E. Baughman, " "	1.45
	Same, " "	2.65
	Same, " "	1.45
	Same, " "	1.45
	Same, " "	2.80
	Town of Sutton, keeping co. prisoners	38.00
	W. P. King, Med. ser. prisoners	21.00
	Braxton Central blank Cir. Cl'k	4.00
	R. G. Linn, Asst. pros. Chris. Bickle	100.00
	A. C. H. Holy, ascertaining & reporting financial condition of County	51.00
	W. L. Armstrong, same	51.00
	M. T. Morrison, Med. ser. paupers	20.00
	Jackson Evans, repairs court house	11.50
	J. R. Sirk, Justice costs	5.50
	P. B. Berry & Sons, paupers coffins	38.00
	Juergens & Walker, Stationery cl'ks offices	46.85
	J. W. Mayse, assessor, agricultural rep	35.00
	John Adams, pub. notice tax payers	9.50
	C. J. Hyer Ice Co., Ice court house	1.92
	C. A. Dufield, inquest	2.00
	W. C. Baxter, same	2.00
	J. C. Friend, witness, use W. C. Baxter	1.10
	Mrs. J. C. Friend, " " "	1.10
	Mrs. R. J. Wine, " " "	3.00
	R. C. Wine, " " "	3.00
	H. W. Samples, witness, use W. C. Baxter	3.20
	Mrs. John J. Rodgers, same	6.10
276	Mrs. John J. Rodgers, same	7.10
	Minerva Samples, "	3.20
	J. Lee Fox, Constable costs	4.00
	J. R. Sirk, Justice, inquest	5.00
	C. I. Starkey, Juror same	2.00
	Blange Hill, Juror same	2.00
	William Nicholas, Juror same	2.00
	J. J. Dobbins, Juror same	2.00
	O. J. Mollohan, Juror same	2.00

	W. H. Criner, Juror same	2.00
	E. J. Miller, Sp. Constable same	3.00
	J. R. Sirk, Justice, inquest	5.00
	Jas. P. Hamrick, Juror same	2.00
	T. P. Reip, Juror same	2.00
	Jas. Ballingee, Juror same	2.00
	Alburtis Given, Juror same	2.00
	J. S. McMorrow, Juror same	2.00
	C. V. Hamrick, Juror same	2.00
	Wilson Westfall, witness same	1.20
	S. Triplett, witness same	1.20
	Ed. Talbert witness same	1.20
	Evert Talbert, witness same	1.20
	Dr. Walker, witness same	1.40
	Juergens & Walker, drugs Guy Fulks	50.25
	J. B. Henry, horses for jurors	5.00
	W. Va. Pulp & Paper Co., for bridge	100.00
	W. C. Smallridge, keeping Geo. Nelson	10.00
	L. M. White, on salary	90.00
	Jas. P. Carr, witness	3.50
	C. F. Greene, def. Ed. Dillion	25.00
	Henry Taylor, keeping Chas. McNeal	7.80
	O. R. Lewis, keeping Oscar Greathouse	80.00
	J. C. Humphreys, Juror inquest	2.00
277	E. S. Carr, witness	3.50
	Samuel Perrine, Express	2.60
	O. R. Lewis, 3 coffins paupers	21.00
	E. W. Hefner, stamps & express	7.32
	W. B. Golden, Justice costs	1.75
	Braxton Hardware Co., sewer pipe &c	59.88
	W. G. Hyer, conveying prisoners	5.60
	J. E. Baughman, justice 8 state cases	25.70
	H. J. Simons, coffin pauper	6.00
	Light Fuel & Power Co. gas	55.72
	Tom Dillion, Sp. Constable costs	3.00
	G. E. Corley, witness	1.10
	I. R. Johnson, Constable costs	19.99
	N. Cunningham, boarding H. Nutt	4.00
	S. J. Long, Comr. Frametown, Bridge	3.00
	W. F. Duffield, same	4.50
	H. S. Quickle, overseer poor	4.00
	G. B. Armstrong, Justice, lunacy costs	6.50
	J. W. Kidd, ex. for same	7.00
	Samuel Perrine, Assessor Agr. rep	32.50
	J. L. Fox, constable costs	45.65
	W. B. Golden, Justice costs	6.85
	J. B. Henry, team for witness	4.00
	Sampson Friend, coffin Chas. Lynch	5.00
	S. L. Gillespie, constable costs	13.50
	W. H. Taylor, Juror	1.50
	A. L. Bull, Juror	1.50

S. B. Myers, Juror		1.50
J. A. Plyman, Juror		1.50
B. J. Weaver, Juror		1.50
Joseph Sims, Juror		1.50
278 Emery Warner, Juror		1.50
J. R. Warner, Juror		1.50
W. A. Chipps, Juror		1.50
G. L. Bennett, Juror		1.50
John Vankirk, Juror		1.50
A. E. White		1.50
C. A. Gribble, Constable costs		5.00
Same, " "		1.20
Same, " "		5.60
Same, " "		6.10
Same, " "		10.90
R. M. Cavendish, School Book Board		4.00
J. Arthur Pierson,	Same	4.00
Jno. E. Morris,	Same,	4.00
D. S. Morton,	Same,	4.00
C. L. Engle,	Same,	4.00
A. R. White,	Same,	4.00
J. H. Hutchinson,	Same,	4.00
E. B. Dufield,	Same,	4.00
W. H. Lee, goods jailor		1.60
F. M. Gibson, boarding prisoners		50.00
T. M. Walsh, post mortem Lute Wright		50.00
M. M. Perkins, witness		.65
Joe. Boggs, witness		1.40
J. Arthur Pierson, Justice costs use Geo. Goad		3.05
Same, " "	same,	2.85
Same, " "	same,	2.85
Same, " "		2.80
Same, " "		4.05
Same, " "		2.70
Same, " "		3.05
Same, " "		2.80
Same, " "		7.60

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J. Arthur Pierson, Justice costs use Geo. Goad	2.35
Same, " "	4.55
Same, " "	2.80
Same, " "	2.80
Same, " "	4.55
Same, " "	6.30
A. M. Canger, Constable costs	17.00
Same, " "	6.50
Same, " "	3.30
J. R. Johnson, " "	11.50
H. H. Boggess, Sh. Constable costs	31.82
J. P. Canfield, Special Messenger	79.55

I. R. Johnson, Constable costs	7.50
A. M. Canger, Constable costs use J. C. Remage	28.20
C. A. Gribble, " " " Geo. Goad	26.40
Same, " " " Same	35.00
A. M. Canger, " " " Same	9.50
Same, " " " Same	3.00
R. D. M. G. White, sewing grass seed poor farm	3.00
L. A. Koontz, Med. Ser. McElwain	30.00
Same, " " B. Nennighon,	15.00
Same, " " Jesse Crites	20.00
Same, " " Martha James	17.00
L. W. Martin, Drugs paupers	7.25
L. W. Martin, Drugs paupers	1.60
Hugh Amos, Phone rent	10.00
P. B. Berry & Son chairs petit jurors	84.00
George Goad, amt. due him on bridge fund	3,665.02
E. H. Cunningham, on salary	20.00
G. E. Corley, witness, use C. A. Gribble	1.10
W. C. Smallridge, keeping George Nelson	10.00
E. G. Rider, on salary	100.00
Same, on salary	100.00

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C. H. Bland, on salary	175.00
E. W. Hefner, " "	50.00
F. M. Gibson, " "	25.00
Same, " "	12.50
C. H. Bland, " "	50.00
Holmboe & Lafferty, architect paid	290.94
W. C. Smallridge, keeping Geo. Nelson	30.00
L. M. White, keeping Chas. Floyd	30.00
E. W. Hefner, on salary	50.00
E. G. Rider, same	200.00
C. H. Bland, same	1.25
F. M. Gibson, same	37.50
D. Smith & Co. Frametown bridge, use Yant Bros.	140.00
Same, " " " " "	500.00
Same, " " " " "	381.57
C. H. Bland, on salary	50.00
J. W. Mayse, same	150.00
J. W. Mayse, same	100.00
J. W. Mayse, same	100.00
W. C. Smallridge, keeping Geo. Nelson	10.00
L. M. White, poor farm	50.00
L. M. White, same	20.00
L. M. White, same	20.00
Elliott & Winchell, jail, use E. G. Rider	500.00
Same, "	1,660.00
E. G. Rider, on salary	50.00
Same, " "	50.00
Same, " "	50.00

	Same, on salary	50.00
	Same, " "	50.00
	C. H. Bland, " "	125.00
	E. W. Hefner, " "	50.00
	F. M. Gibson, " "	25.00
		$18696.16

281 Grand Jury.

Sept. Term,	John F. Beamer	6.70
1905.	E. T. McCoy	7.60
	W. T. Brosius	8.00
	James Given	8.10
	S. J. Long	6.00
	John F. Bull	6.00
	A. L. Jack	7.60
	J. W. Howell	8.10
	B. F. Hyer	6.60
	Geo. Mollohan	7.40
	James R. Given	6.20
	H. D. Riffle	6.80
	S. L. Cunningham	8.50
	B. J. Weaver	4.00
	Wm. Krofft, Sr	7.90
	J. A. Pierson	6.00
	James Daly	6.00
Feb. Term,	John L. Bender	6.00
1906.	Hugh Swisher	6.00
	C. C. Wilfong	6.00
	I. O. McCoy	6.00
	Clayborne Skidmore	7.80
	I. H. Greathouse	6.00
	J. M. Hackins	7.50
	E. B. Hardman	8.30
	J. W. Friend	6.00
	Minter Cunningham	6.00
	S. I. Stalnaker	8.40
	Scott J. Duffield	8.00
	J. B. Nottingham	8.10
	H. E. Engle	6.80
	I. S. Douglass, nursing Robt. K-lley	20.00
	W. S. Golden, Justice costs	5.30
	Same	5.30
	Same	4.05
282	J. W. Berry, conveying Mrs. Mith to hospital	50.00
	H. Stout	6.00
	G. W. Gerwig	8.00
	J. M. Rose	2.50
	A. S. Stalnaker	2.10
	S. S. Stonestreet	2.90

May T., 1906.	W. F. Morrison	6.00
	Worth Barr	9.00
	David Hamric	8.00
	P. G. Cutlip	7.20
	Lindsay Bosely	7.20
	J. L. Skidmore	7.00
	Chas. B. Heater	7.00
	W. A. Stout	8.30
	H. B. Humphreys	6.10
	James G. Bosely	7.80
	Steward G. Bird	8.50
	E. W. Squires	6.00
	Camden Fox	6.00
	Henry Bender	6.00
	Albert Shock	6.00
	W. R. Lancaster	6.00
	Samuel Armstrong	4.00
	J. I. Hefner	2.70
	A. F. Holden	3.30
		358.00

Petit Jury.

	Chas E. Lough	26.90
	W. T. Diggins	3.30
	Chas. Griffin	27.50
	W. M. Fast	26.50
	M. H. Squires	26.20
	John E. Hall	28.00
	C. C. Lough	17.90
283	B. S. Berry	17.20
	David L. Long	21.50
	James M. Wyatt	26.00
	M. S. Williams	22.00
	O. R. Lewis	26.80
	James Morrison	24.40
	C. C. Wilfond	25.00
	D. H. Baker	26.40
	D. M. McCullough	23.00
	Matthew Walton	27.00
	Wm. L. Finley	27.10
	Balias Allen	21.50
	I. F. Boon	21.70
	Wm. F. Krafft	23.20
	P. A. Gibson	23.10
	Orestus Whytesell	27.50
	Alamander Hamric	22.00
	A. W. McMillian	22.00
	D. J. Dennison	27.10
	S. L. Shaver	26.40
	J. L. Loyd	26.20

		M. E. Riffler	22.00
		John Belknap	26.80
		A. B. Beamer	26.90
		W. H. Perrine	21.30
		J. A. Gum	26.10
		Lee Gorrell	25.50
		David A. Harper	22.70
		A. P. Wakefield	21.50
		Martin L. Knight	26.50
		J. H. Lake	27.00
		C. A. Nulter	27.50
		J. C. Carder	2.10
284			
	Nov.	M. C. Bosely	13.80
		W. C. McCray	14.50
		John A. Cunningham	14.50
		Samuel Armstrong	14.50
		M. A. Loudon	14.00
		S. L. Cunningham	14.50
		W. N. Gregory	2.90
		Wm. L. Currence	9.50
		E. B. Hardman	14.30
		F. L. Carrick	14.00
		John M. Cutlip	13.00
		W. M. May	13.10
		J. A. Jarvis	12.70
		H. M. Helmick	1.70
		J. M. Canfield	12.00
		G. W. Jackson, Sr.	12.70
		L. F. Davis	13.00
		A. Carroll	13.50
		H. J. Hall	12.80
		Franklin Frame	12.30
		S. T. Perrine	13.00
		Morgan Given	14.00
		J. S. Hughes	15.40
		C. W. Ware	13.40
		George D. Marple	12.90
		John Rogers	13.10
		A. M. Douglass	13.20
		E. J. Stump	14.00
		I. H. Greathouse	13.20
		W. F. Barnett	12.50
		J. B. Paugh	13.00
		Willis Mollohan	13.60
		N. G. Singleton	13.00
285		W. T. Brosius	14.00
		H. A. Post	14.20
		M P. Childers	14.00
		J. R. Hutchinson	13.00
		Geo. T. Hyer	16.30
		J. P. Tinney	12.90

Feb. 1906.	James M. Singleton	17.70
	J. C. Humphreys	3.00
	James Griffin	20.60
	C. B. Beamer	19.00
	Lewis Dunn	18.90
	T. Robinson	19.10
	J. L. Carper	15.00
	M. L. Barnett	6.50
	G. R. Rose	12.30
	H. B. Lake	20.20
	John Riffle	15.90
	S. S. Frame	19.50
	R. S. Ramsey	20.10
	S. M. Harris	14.30
	Frank Friend	15.00
	J. B. Heater	20.50
	Chas. A. Harris	14.30
	N. W. Wells	20.50
	W. P. Knight	20.50
	Minor Horner	21.00
	W. M. Lockhard	16.20
	R. A. Given	12.50
	D. P. Stump	22.30
	J. C. Boon	13.00
	G. B. Fisher	21.60
	W. G. Bright	20.50
286	J. A. Detamore	11.30
	J. F. Bennett	21.00
	J. W. Riffle	15.50
	A. E. Hickman	16.50
	James P. Carr	21.00
	Frank Fisher	11.10
	Wm. Fisher	14.00
	D. W. Gibson	1.70
	David Brady	11.30
May, 1906.	U. S. Upton	11.00
	C. O. Kaldrider	16.20
	P. S. Perkins	15.50
	George Goad	9.60
	R. J. Loyd	8.90
	John W. Hickman	10.40
	S. J. Duffield	17.00
	C. N. Snodgrass	19.80
	James Ballengee	9.60
	Wm. R. Moss	14.50
	B. F. Herndon	10.80
	S. B. Myers	6.90
	G. P. Gillespie	12.50
	G. W. Lough	11.90
	W. M. McCoy	16.80

	John W. Baughman	13.20
	I. M. Gerwig	19.00
	G. R. Harris	11.50
	M. S. James	18.00
	S. B. Beckett	13.10
	Silas Reip	11.50
	W. C. Baxter	15.00
	J. Perry Rollyson	14.50
	John L. Fox	15.10
287	H. B. Pierson	11.70
	E. L. Chapman	16.70
	B. F. Hyer	11.10
	R. N. Rollyson	13.20
	W. M. Douglass	16.00
	H. A. Kitts	13.90
	E. S. Carr	15.10
	Jno. A. Posey	15.50
	H. B. Curtin	15.00
	N. E. McCoy	9.80
	Luther Hefner	11.10
	Hugh Amos	17.00
	P. W. Hardman	12.60
	A. J. Utt	18.10
	R. P. Evans	11.50
	G. C. Enbank	10.50
	W. F. Duffield	6.10
	Henry Gerwig	19.50
	J. Lee Fox	12.60
	J. McDunn	20.20
	N. Van Wilson	12.40
	Franklin Frame	12.30
	Camden Fox	12.00
	J. Lee Berry	12.30
	W. F. Stewart	11.50
	J. Q. Harris	14.30
	Andrew Skidmore	11.50
	W. E. Bollinger	3.60
	L. F. Linger	26.50
	Amos Bright	12.00
	M. D. Sprigg	10.90
	S. B. McDougle	15.40
	John H. Hammer	8.50
288	W. H. Herndon	12.00
	L. D. Davis	11.00
	F. M. Cottrill	12.00
	W. A. B. Cutright	10.50
	J. M. Squires	11.80
	Jackson Evans	19.50
		2,846.60

289 *Recapitulation.*

County Fund.

		Dr.
To	County Claims allowed July 1, 1905, to July 1, 1906.	18696.16
"	Grand Jury claims allowed July, 1905 to July 1 1906	358.00
"	Petit Jury claims allowed July 1, 1905, to July 1, 1906	2846.60
"	Delinquent list County Fund, real and personal property	657.61
"	Delinquent List Bridge Fund, real and personal property	137.80
"	Exonerations, County Fund	146.45
"	Exonerations, Bridge Fund	27.75
"	Commissions Sheriff, County Fund	972.59
"	Commissions Sheriff, Bridge Fund	182.18
"	Discount, County Fund, on $9120.58 taxes collected, in Oct. and Nov. 1905	228.01
"	Discount, Bridge Fund, on $1891.35	47.28
"	Outstanding County Claims July 1, 1905	16000.03
"	Outstanding Bridge Claims July 1, 1905	9596.37
"	Outstanding Petit Jury Claims July 1, 1905	60.50
"	Amount due Geo. Goad on Bridge fund July 1, 1905.	3665.02
		53622.35

Contra Cr.

By	Levy on real and personal property, County	18636.38	
"	Levy on real and personal property, Bridge	3886.70	
"	Railroad tax certified, County	2051.05	
"	Railroad tax certified, Bridge	401.27	
"	Sale and Redemption Delinquent Lands, County	477.30	
"	Sale and Redemption Delinquent Lands, Bridge	198.85	
"	Tax assessed by Sheriff, County	.96	
"	Tax assessed by sheriff, Bridge	.21	
"	Amount due from Geo. Goad on County July 1 1905	82.37	
"	Amt. derived from sale of Poor Farm to P. S. Perkins	2500.00	
"	Amt. received from E. G. Rider from sale of bonds	1000.00	

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By	Balance due from E. G. Rider, from sale of bonds	564.70	
	Amt. received from Henry Waggy on Poor Farm notes	682.00	

Bal. due from Henry Waggy on Poor Farm Notes	504.93	
Amt. received from Hines & Kelly on E. A. Berry Judgment	2662.60	
Amt. received from J. C. Berry on E. A. Berry, Judgment	530.00	
Bal. due County on E. A. Berry Judgment	2376.79	
Jury costs collected	78.00	
Notes due county on office rents	359.60	36993.71
Amt. owing in excess of assets		16638.64

John Adams, Sheriff, to Braxton County on County Fund.

		Dr.
Levy on real & personal property	18636.98	
Railroad tax	2051.05	
Delinquent lands	477.30	
Received from Hines & Kelly on E. A. Berry judgment	2662.60	
Received from John C. Berry on E. A. Berry judgment	530.00	
Received from Henry Waggy, Poor farm notes	682.00	
Derived from sale of Poor Farm	2500.00	
Received from E. G. Rider, from sale of bonds	1000.00	
Taxes assessed by Sheriff	.96	
Jury costs collected	78.00	28618.89
	Contra Cr.	
General Fund claims cancelled	21807.59	
Petit Jury claims cancelled	2841.60	
Grand Jury Claims cancelled	346.40	
Delinquent list	657.61	
Exonerations	146.45	
Discount on $9120.58	228.01	
Commissions allowed sheriff	972.56	17000.25
To bal. due County from sheriff		1618.64

291 John Adams, Sheriff, to Braxton County on Bridge Fund.

	Dr.
Levy on real and personal property	3886.70
Delinquent lands	198.85
Railroad tax	401.27
Taxes assessed by sheriff	.21
Amount due Sheriff to balance	688.81
	5175.84

CONTRA CR.

Vouchers cancelled	4780.83
Delinquent list	137.80
Exonerations	27.75
Discount on $1891.35	47.28
Commissions allowed sheriff	182.18
	5175.84

INTEREST FUND, DR.

To 35 coupons $30 each bond 78 to 112 due June 1, 1905	1050.00	
To interest on same to Jan. 31, 1906	42.00	
To 35 coupons $30 each bonds 78 to 112 due June 1, 1906	1050.00	
To 6 coupons $30 each bonds 67 to 72 due June 1, 1906	180.00	
To express on same	1.50	
To 80 coupons $10 each bonds 1 to 80 due Jan. 1, 1906	800.00	
To 80 coupons $10 each bonds 1 to 80 July 1, 1906	800.00	
To delinquent list	110.15	
To exonerations	27.41	
To discount on $1520.99	38.02	
To Commissions allowed sheriff	142.33	4241.41

CONTRA CR.

By Levy on real and person property	3117.33	
By Railroad tax	336.64	
292		
By Delinquent sales	51.70	
By Amt. rec'd George Goad	800.00	
By Amt. due this fund from Geo. Goad	250.38	4556.05
Excess of assets over indebtedness		314.64

$10 coupons on bonds Nos. 61 to 70 due Jan 1, 1906, and July 1, 1906, 20 coupons in all are still outstanding.

John Adams, Sheriff, on Interest Fund, Dr.

To Total amount rec'd from levy and other sources	4,305.84

CONTRA, CR.

By vouchers cancelled	3,723.50
By delinquent list, exonerations, sheriffs' commissions, and discount	329.91
By Amt. due fund from Sheriff	252.43
	4,305.84

BOND ACCOUNT—SINKING FUND, DR.

To bonded indebtedness July 1, 1905.. ..	60,500.00	
To Delinquent list.....	179.15	
To Exonerations.....	40.60	
To Discount on $2535.25.....	63.38	
To Commissions allowed sheriff.....	331.77	61114.90

CONTRA, CR.

To Levy on real and personal property....	5,169.70	
To Railroad tax.....	542.82	
To Amt rec'd from Geo. Goad on this fund.	5,740.62	
To bal. due from Geo. Goad to this fund...	48.35	
To Amt. of W. O. Morrison note collected..	801.52	
To Amt collected on W. F. Morrison note..	125.00	
To Bal. Due from W. F. Morrison on note July 1, 1906.....	145.85	
To taxes assesed by sheriff.....	.26	
To note of I. H. Greathouse, W. O. Morrison and Jesse Skidmore dated Aug. 5, 1899, and interest.....	623.92	
To note of T. M. Berry, Henry Waggy & P. B. Berry dated July 1, 1898, and interest	767.90	
293		
To note of W. E. Haymond and W. F. Morrison dated July 11, 1899, and interest	1126.28	
To note of A. C. Dyer, F. A. Tonkin and Henry Waggy dated April 6, 1897, and interest	1041.31	
To note of W. G. Hyer, J. S. Hyer, and Henry Waggy dated July 1, 1898, and interest	491.65	
To note of W. E. Haymond and J. S. Hyer, dated July 2, 1898, and interest.....	1776.95	
To note of C. K. Newlon, W. P. Newlon and E. W. Squires, dated July 16, 1898..	1109.61	
To note of Henry Waggy, W. G. Hyer, and Amos Bright, dated July 6, 1898.....	783.96	20,295.70
Bonded indebtedness less assets.....		40,819.20

Sheriff, on sinking fund, Dr.

To total am't rec'd from levy and other sources	12379.92	

CONTRA, DR.

By bonds paid July 1, 1905, to July 1, 1906	10000.00	
By delinquent list, exonerations, discount and *and* commissions of sheriff	614.92	
By discount due fund from Sheriff to balance	1765.00	12379.92

NOTE.—There is owing by the county $50,500.00 in bonds.

294 STATE OF WEST VIRGINIA, *Braxton County, To wit:*

I, E. W. Hefner, Clerk of the County Court of the County and State aforesaid, do hereby certify that the foregoing is an itemized account of the receipts and expenditures of the County during the fiscal year ending June 30th, 1906 and also a statement of the debts and credits of the County showing separately the standing of each fund.

Given under my hand, this the 4th day of July, 1906.

E. F. HEFNER, *Clerk.*

Filed on behalf of Residents, Aug. 4, 1906.

W. B. MATHEWS, *Clerk.*

295 VI.

Road Claims.

Birch District.

G. W. Yeager (1904) levy), work	19.74
W. H. Lee, tools for overseer	4.90
Eli R. Nicholson, powder use E. W. Hefner	2.65
W. H. Lee, powder and fuse	2.75
Hugh Woods, warning hands	3.00
T. E. White, reviewing road	1.50
J. W. Cook, same	1.50
W. A. Ramsey, same	1.50
W. T. Tucker, warning hands	1.50
W. P. Dickey, work	6.00
Same, warning hands, use J. L. Fox	3.00
E. M. James, warning hands, &c	4.25
Ellis Snodgrass, warning hands	3.00
W. W. Nettles, warning hands & sills bridge	5.00
Joe Frimier, warning hands	3.00
Simon Nicholas, warning hands	1.50
Bernard Given, same	3.00
G. L. Long, same	3.00
Frank Given, same	6.00
J. B. Nottinghan, same & work	2.50
James Lawlis, lumber bridge	3.77

C. A. Moore, warning hands	3.00
Thos. Reip, same	3.00
Tyburtis Nottingham, same	3.00
J. H. Mollohan, same	3.00
Perry Meadows, same	3.00
P. M. Morris, Lumber bridge	4.80
E. J. Miller, warning hands	3.00
A. S. Nicholas, same	1.50
I. C. Marks, same	1.50
J. J. Dobbins, reviewing road	3.00
296	
E. J. Stump, Same	3.00
J. E. Young, Same	3.00
Henry Shaver, Warning hands	3.00
J. P. Rollyson, same	3.00
Blange Hill, same	3.00
Isaac Carr, right way road	50.00
Sarah Chapman, same	75.00
H. C. Fox, warning hands, dynamite &c	6.50
T. H. Martin, reviewing road	1.50
J. D. Davis, reviewing road	1.50
Benton Given, same	1.50
R. F. Chapman, warning hands	3.00
John P. Hamric, reviewing road	1.50
J. W. Keener, same	1.50
B. S. Dobbins, same & dynamite	2.50
O. L. Given, warning hands	3.00
G. B. Coulter, same	3.00
B. F. Hall, same & removing timber	3.50
Peter Hamric, same & work on road	4.50
Ransom Samples, work	10.50
P. H. Given, damages change road	300.00
	595.86

Holly District.

Braxton Central, pub. notices, etc	10.60
I. T. Cartright, surveying road	2.50
C. E. Berry, work, etc. Cartright & Morrison	6.50
J. M. Hall, warning hands	3.00
W. H. Lee, tools &c	25.85
N. W. Wells, contract Pre. No. 3	17.50
J. M. Hall, advance same	25.00
John Evans, contract same	25.00
John Carroll, same	24.75
A. P. Wakefield, same	1.25
297	
C. B. Long, same	1.25
Loyd Tinney, same	2.50
J. P. Tinney, same	2.50

G. P. Kitts, same	3.13
J. E. Kitts, same	3.75
Amos Rose, same	6.25
Chas. Facemire, same	7.50
Guy Tinney, same	6.25
A. N. Hines, same	6.88
J. B. Hines, same	7.50
A. S. Stalnaker, same	7.05
H. A. Long, same	1.50
Robert Tinney, same	25.00
W. F. Hines, same	40.75
Jesse Skidmore, sur. roads, Pre. No. 1	22.00
E. J. Skidmore, same	8.75
Russell Skidmore, same	14.00
J. B. Richardson, 2 teams same	68.00
C. C. Wilfong, work same	54.00
S. B. Cutlip, work same	3.75
J. L. Skidmore, same	12.00
J. C. Skidmore, same	11.25
J. W. Squires, Same	1.87
L. F. Linger, same	8.75
J. C. Dermison, contract same	25.00
J. R. Perkins, Contract same	25.00
H. W. Perkins, work Pre. No. 2	156.75
M. E. Gum, same	26.55
S. J. Skidmore, same	10.00
O. C. Herron, warning hands 1904	1.50
Woody Jenkins, work road	.63
Loyd Harris, same	6.35
Loyd Tinney, same	1.25
G. D. Browning, Same	1.25
Thomas Browning, same	5.55
298	
Ola Browning, Same	.85
I. V. Bright, same	.60
L. D. Kinceley, same	2.50
E. J. Robinson, Same	6.25
Clay Moore, lumber	2.00
Wm. Phares, work on road	1.87
Amos Bright, same	1.85
Sennett Cutlip, same	8.02
J. W. Harper, same	6.12
M. C. Enbank, Same	1.25
C. E. Lough, Same	1.75
Harry Morrison, Same	1.40
Albert Bragg, Same	1.25
George Gum, Same	1.25
J. L. Conrad, Same	12.97
Chas. Gum, same	23.60
Minter Lough, Same	1.87

Wm. McLaughlin, Same	2.25
David Harper, same	5.00
A. E. Hickman, Same	7.07
Dennis Cutlip, work on road	1.25
H. H. Cutlip, same	22.50
J. F. Cutlip, same	2.50
J. M. Ware, same	5.00
Isaac Ware, same	3.75
J. H. Hosey, same	1.25
K. Skidmore, same	11.80
N. W. Skidmore, same	45.75
A. L. Ware, same	8.62
B. F. Dennison, same & lumber	30.15
Luther Hosey work road	.25
J. W. Phares, same	3.50
Clayborn Skidmore, same	1.00
E. Vermillion	20.00

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M. L. Knight, & C. E. Berry, on contract	15.00
C. E. Berry, work on road	2.50
H. W. Gum, same	20.50
S. J. Lockard, sharpening tools	1.15
W. F. Hines, work on road	26.61
Robert Tinney, same	29.10
H. A. Long, same	5.50
A. S. Stalnaker, same	8.45
J. B. Hines, same	13.13
A. N. Hines, same	16.25
Guy Tinney, same	10.63
Loyd Tinney, same	3.75
J. B. Rose, same	3.75
O. C. Rose, same	5.00
Scott Hoover, same	2.50
C. N. Hines, Same	6.25
G. W. McNemar, Same	4.13
H. H. Jackson, Same	7.85
S. W. Brannon, Same	3.13
J. C. Tinney, same	4.38
A. N. Barnett, same	6.25
Will Whytesell, same	1.88
David Barnett, same	6.50
John Sutton, same	5.85
N. W. Stalnaker, same	5.20
Joe Sears, Same	7.00
Thomas Bleight, Same	3.00
B. F. Marlow, work on road	13.38
Isaac Hines, same	.75
A. B. Cunningham, same & foot log	12.00
W. B. Tacemire, work on road	6.00
S. J. Skidmore, same	21.25
Charlie Skidmore, same	6.25

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Palser Gillespie, on contract	25.00
G. D. Marple, same	22.00
E. F. Coulter, same	6.75
W. . Lancaster, work on road	1.87
J. M. Hyer, same	3.12
Laco Hyer, same	3.13
J. W. Squires, same	8.74
Russell Skidmore, same	5.62
Henry Williams, "	1.25
Joseph Ocheltree, same	9.37
Geo. Ocheltree, same	3.75
J. M. Knight, same	1.25
H. K. Skidmore, same	2.50
A. A. Skidmore, same	2.50
C. H. Kinceley, same	2.50
L. F. Lingee, "	5.62
J. C. Skidmore, "	16.37
J. L. Skidmore, "	17.25
G. C. Squires, "	4.12
T. G. Beamer, "	5.00
C. E. McQuain, "	1.25
W. R. Skidmore, "	3.75
S. B. Cutlip, "	6.62
H. C. Skidmore, "	1.25
Andrew Perrine, Jr., same	1.25
B. S. Ocheltree, " "	2.50
J. E. Ocheltree, "	2.50
Albert Ware, "	5.00
Jay Holland, "	1.25
S. J. Lockard, "	2.10
B. J. Richardson, "	4.00
S. J. Skidmore, "	12.00
Jesse Skidmore, "	69.00

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John Evans, same	12.50
J. M. Hall, Same	12.50
Edward Ellison, work on road	.75
R. I. Roberts, same	1.25
W. D. Cutlip, same	3.75
J. R. Given, sur. road	3.00
M. D. Sprigg, work on road	2.00
Philip S. Perkins, same	2.00
W. B. Facemire, same	2.50
O. B. Squires, in lieu claims 54 S. L. fund	1.50
W. H. Lee, road tools etc	5.00
B. F. Dennison, work on road	7.00
H. H. Cutlip, same	3.00
Lowery Minear, same	1.50
Frank Cutlip, same	.50

Elbert Vermillion, same	18.25
C. E. Lough, same	.63
J. A. Krafft, same	8.49
H. W. Gum, "	28.50
J. M. Wyatt, reviewing road	10.00
J. A. Johnson, same	20.00
S. M. Smith, same	4.50
John Wyatt, same	6.00
Same damages for right way	20.00
Job Hall, same	15.00
J. M. Hall, on contract	37.50
John Evans, same	37.50
N. W. Wells, same	17.50
	1805.77

Otter District.

W. D. Perrine, warning hands, 1904	1.50
W. H. Jackson, same	1.50
Henry Belknap, same	1.50
I. T. White, "	1.50

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T. J. Moore, same and hauling rock	3.50
W. H. Lee, tools etc	16.07
I. H. Duckworth, warning 1904	1.50
Braxton Hardware Co., dynamite	3.60
M. M. Perkins, bal. on contract	19.50
Taylor Skidmore, warning, 1904	1.50
Braxton Central, pub. notices, etc	7.00
E. W. Cutlip, work on roads	135.22
W. N. Pickerell, same	15.00
S. F. Sands, same	6.00
Franklin Perkins, same	8.00
Philip Perkins, same	20.00
J. C. Reece, work Pre. No. 3	1.40
Ed. Canfield, same	11.20
E. C. Skidmore, same	14.70
O. B. Tinney, same	18.00
Joe Canfield, Same	89.08
E. C. Skidmore, same, use Ed. Canfield	6.25
Charley Meadows, Same, " F. M. Tucker	3.70
F. M. Tucker "	5.60
Charley Meadows, " " Jenkins & Jackson	3.71
John Snider, " " Web. Gibson	1.47
Wade Gibson, " " " "	1.75
Joe Canfield, " " " "	4.92
O. B. Tinney, " " " "	1.40
E. C. Skidmore " " " "	9.85
Dave Starbuck, $3.85; John Snider, $1461; N. B. Skidmore, $7.50; N. B. Skidmore, $5.45; Eldridge Jackson, $2.10, use Dunn, Long & Co	35.51

E. J. Chapman, work team..... 2.75
J. S. Carr, warning 1904..... 1.50
J. H. Skidmore, work Pre. No. 3..... 83.10
G. W. Cutlip, work on road..... 43.90
Same warning 1902 & 1903 & reviewing..... 7.50

303.

W. H. Lee, road tools..... 7.25
U. C. Stewart, work roads..... 24.90
John F. Shaver, same..... 1.25
Frank Bowers, repairing road..... 80.00
A. J. Cutlip, same..... 15.00
James Brady, work on road..... 2.25
A. L. Berry, work on road team..... 12.00
V. G. Bender, work on road..... 3.60
Chris. Bender, " " 2.50
Willis Cutlip, " " 15.00
W. E. Hudkins, " " 17.67
Okey Meadows " 3.12
J. M. Carr, " 7.87
Perry Mitchell, " 10.12
Floyd Frame " 5.00
Byrne Beall " 1.50
James Haric, " 15.00
James Dobbins, " 2.75
Jacob Dobbins, " 2.20
P. B. Hurst, " 4.40
Mat Brady, work use W. K. Bender..... 1.00
Same, " " " 9.15
Benjamin Brady, work use T. S. Gerwig..... 2.65
John F. Shaver, " " " 12.00
John Sawyers, " " " 5.40
Ed. Brady, " " " 8.06
Same, " " " 1.25
Richard Brady, " " " 2.50
Ed. Brady, " " " 3.00
Will Baugman, work roads..... 11.90
J. B. Henry, same..... 7.00
Ed Canfield, " 10.48
J. W. Kelly, same, use J. H. Skidmore..... 1.45
Walter Berry, work roads..... 6.00

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Pete Hamric, same use S. M. Hamric..... 1.87
S. M. Hamric, " use Geo. Goad..... 15.75
J. C. Hamric, work road..... 7.50
Earl C. Hamric, same..... 6.00
H. M. Helmick, same..... 9.75
Ed. Ellyson, same, use H. M. Helmick..... 2.25
Dan James, " " " 7.50

J. C. Hamric, work use H. M. Helmick	3.00
Earl C. Hamric, " " "	2.25
Ivan Lamb, " " "	1.50
Earl C. Hamric, work road	3.00
J. W. Kelly, same use Dunn, Long & Co	6.60
Hanse Tinney, Same " "	5.95
Ed. Canfield, " " "	3.17
Easton Westfall, " " "	1.40
S. M. Hamric, work road	3.00
Spurgeon Hamric, same	2.00
Olie Berry, same	1.50
Roy Holland, same use Geo. Goad	7.50
Ed. Ellison, " " "	5.17
John Snyder, " " K. M. Mace	1.07
J. H. Skidmore, work road	31.25
Bland Skidmore, same	14.70
Joe Canfield, "	36.00
E. C. Skidmore, "	7.70
E. Duffield, "	2.80
J. Mc. Dunn, "	8.07
Wm. M. Tinney, "	1.00
Henry Canfield, "	2.50
W. S. Canfield, "	1.75
Chas. Meadows, " use J. H. Skidmore	.64
D. S. Engle, work road	92.38
J. L. Allen, work Sec. 1 & 2	30.00
M. J. Thrash, " " 3 & 5	35.00

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W. H. Cogar, work Sec. 4 & 7	30.00
W. N. Pickerell, " " 8	15.00
Reuben Gerwig, " " 12	15.00
Isaac Gerwig, " " 13	15.00
P. S. Rutherford, " " 14	8.00
A. Bender, " " 15	15.00
Cutlip & Butcher, " " 19	15.00
E. B. Loyd, " " 20	15.00
W. A. Boseley, " " 22	15.00
Linzy Bosley, " " 24	15.00
M. M. Shaver, " " 26	8.00
J. T. Cutlip, " " 27	15.00
P. S. Rutherford, " " 50	6.00
A. Gerwig, work on road	1.50
H. E. Engel, wor- road	5.48
E. W. Cutlip, same & surveys &c	56.80
W. E. Perkins, same & warning 1904	6.90
C. L. Engle, same & use team	22.25
F. L. Engle, lumber & use team	8.54
W. L. Wayne, work on road	3.50
J. M. Scott, same	8.25
Jas. Perkins, same	3.85

COPY BOUND CLOSE

W. M. Lockard, same	7.40
Charley Meadows, same use J. & J	2.10
T. J. Boggs, work on roads	18.00
W. K. Bender, same	20.70
John Knabb, repairing road	40.00
A. J. Cutlip, same	10.00
J. Lee Berry, "	26.00
D. S. Engle, bal. on claim	16.27
W. C. Hawkins, repairing road	13.00
F. W. Bowers, same	17.75
T. J. Dean, warning &c	2.00
D. L. Kitts, hauling br. tools	6.00
S. S. Stonestreet, work road	46.75
306	
F. S. Stewart, same	27.05
Edgar Burrough, same	1.75
Pete Boggs, "	2.50
J. P. Carr, "	1.25
A. F. Carr, "	1.25
J. S. May, "	3.00
John Meadows, "	2.00
Wm. Scott, "	8.00
John Perrine, " use Rosa Rogers	7.97
Andy Brady, " " " "	3.00
Same, " " " "	14.00
S. S. Stonestreet, bal. on claim	10.00
S. A. McElwain, warning 1904	1.50
A. B. Williams, work road	15.00
Braxton Hardware Co. Sewer pipe &c	6.00
Geo. Goad, amt. due him set 1905	130.26
	2013.49

Kanawha District.

E. L. Lockard, repairing bridge	17.35
A. R. White, warning 1903	1.50
T. J. Helmick, warning 1901	1.50
Albert Bull, warning 1904	1.50
M. J. Myers, warning 1904	1.50
H. T. Myers, road tools	9.03
J. D. Berry, warning & foot log	24.00
W. H. Lee, tools for surveyors	11.20
J. W. Thompson, warning 4 yrs. powder etc	8.00
Wm. A. Pritt, warning 1905	1.50
C. T. Brohead, same 1904 & 1905	3.00
J. B. Finnegan, same " "	3.00
L. J. Shock, work on roads	22.50
B. E. Williams, warning 1904 & 1905	3.00

	Geo. Malcomb, warning 3 yrs	4.50
307	B. F. Herndon, warning 1904	1.50
	Thomas Ratcliff, same 1905	1.50
	T. B. Cunningham, work with team	6.00
	R. L. Tonkin, warning 1904 and 1905	3.00
	Anton Veith, same 3 yrs	4.50
	D. M. Riffle, work on road	2.00
	W. T. McKinney, warning 1904 & 1905	3.00
	J. C. Gillespie, same	3.00
	M. E. Boice, same	3.00
	Wilkie Alkire—same 1905	1.50
	Albert Myers, same 3 yrs	4.50
	J. D. Berry, same & work on road	3.00
	R. L. Gibson, warning 1904 & 1905	3.00
	Luther Conrad, same & lumber	9.00
	R. W. Mealy, same 1904 and 1905	3.00
	A. W. Sponangle, same 1905	1.50
	B. F. Herndon, same 1903, 1905	3.00
	W. H. Herndon, same 1905	1.50
	A. L. Bull, same	1.50
	P. T. Cogar, same	1.50
		173.58

Salt Lick District.

	J. W. Howell, dynamite, etc	5.00
	H. N. Snider, work on road	17.00
	H. S. Hefner, work on road	50.00
	W. H. Lee, tools	2.60
	J. W. Howell, tools etc	11.63
	M. A. Rush, warning & work	6.25
	D. H. Gibson, warning 1903	1.50
	H. J. Loyd, tools	24.96
	John P. Berry, work on road	50.51
	D. S. Squires, ex. road	2.00
	A. N. Posey warning 1904 & 1905	3.00
	J. E. Smith, warning & work	5.00
308	J. W. Howell, powder &c	2.00
	W. P. Knight, work with team	7.00
	C. C. Wilfong, work with team,	18.00
	B. J. Richardson, work with team	24.00
	B. H. Moss, warning 1904 & 1905	3.00
	F. F. Posey, warning 1905	1.50
	F. A. Evans, 3 days team	12.00
	R. P. Evans, 2 days same	8.00
	Albert Douglas, work on road	3.50
	G. W. Davis, same	2.00
	T. E. Singleton, Same	3.50
	C. E. Singleton, "	2.00
	Noah Singleton "	2.80
	French Singleton, "	1.80

COPY BOUND CLOS

S. B. Singleton,	Same	1.00
Bill Allen	"	2.00
Ed. Dean,	"	2.00
S. J. Singleton	"	.50
B. Turner,	"	.65
Newt. Singleton,	"	3.00
H. M. Hopkins,	"	16.05
J. N. Bull,	"	14.70
M. C. Wilson,	"	5.00
John Squires,	"	5.00
Ert. Singleton,	"	.50
A. J. Coger,	"	2.50
W. C. Hopkins,	"	6.40
C. C. Mick, lumber bridge		3.75
Charley Mick, work team		6.00
L. L. Mick, work on road		4.50
W. A. Ball, warning & work		6.00
W. Brown, work with team		3.50
C. B. Groff, lumber bridge		13.75
309 Geo. W. Davis, warning 1905		1.50
J. M. McConkey, warning & work		19.25
O. C. Hutchinson, warning 1904 & 1905		3.00
A. A. Post, lumber bridge		2.50
John H. Nutter, warning 3 yrs		4.50
R. E. Hutchinson, dynamite		1.12
Baylus Allen, foot log		1.00
W. L. McCauley, warning 3 yrs		4.50
O. H. Ocheltree, warning 1905		1.50
Newton Singleton, bal. claim		.75
Homer Brown, warning 1904 & 1905		3.00
A. N. Posey, work road		5.00
John Dilly, warning & work		5.00
M. A. Rush, warning		1.50
J. J. McClain, warning 1904 & 1905		3.00
J. R. Hutchinson, foot bridge		10.00
J. W. Riffle, warning		1.50
Henry Hefner, work on road		50.00
J. A. Posey, same		9.50
Raymond Bowyer, making fill		20.00
H. S. Hefner, work on road		18.64
G. W. Harris, same		15.00
F. F. Posey, removing ship		.75
E. H. Cunningham, reviewing road		1.50
J. B. Norman, same		1.50
Geo. Goad, amt. due settlement 1905		168.42
		728.78

310 BIRCH DISTRICT ROAD, DR.

To claims allowed July 1, 1905 to July 1, 1906	595.86	
To oustanding claims July 1, 1905	374.89	

To delinquent list	37.26	
Exonerations	29.96	
To Discount on $352.04	8.80	
To Commissions of Sheriff	41.30	1088.07

CONTRA, CR.

By levy on real and personal property	855.09	
By Railroad tax	152.81	
By Delinquent sales	15.34	
By tax assessed by sheriff	.18	
By Amt. received from Geo. Goad in full	38.21	1061.63
Indebtedness of fund above assets		26.44

SHERIFF, DR., BIRCH ROAD.

To total amount rec'v'd from levy and other sources	1061.63

CONTRA, CR.

By vouchers concelled	662.99
By delinquent list, exonerations, discounts and commissions of Sheriff	117.32
By balance due fund from Sheriff	281.32
	1061.63

311 HOLLY DISTRICT ROAD, DR.

To orders July 1, 1905 to July 1, 1906	1805.77	
To orders outstanding July 1, 1905	189.95	
To delinquent list	178.74	
To exonerations	3.43	
To discount on $271.58	6.79	
To commissions of sheriff	60.97	
To Amt. due from fund to John Adams, shff.	178.17	2423.82

CONTRA, CR.

By levy on realty and personalty	1318.06	
By railroad tax	128.13	
By delinquent sales	6.82	
By tax assessed by sheriff	.07	
By rec'd from Geo. Goad, in full	385.19	1838.27
Indebtedness above assets		585.55

SHERIFF, HOLLY ROAD, DR.

To total amt. rec'd from levy and other sources	1837.27
To balance due sheriff	178.17
	2016.44

CONTRA, CR.

By vouchers cancelled		1766.51
By del. list exonerations, discount and sh'ff's commissions		249.93
		2016.44

312 OTTER DISTRICT ROAD, DR.

To orders allowed July 1, 1905 to July 1, 1906	2013.49	
To outstanding orders July 1, 1905	376.68	
To amt. due George Goad July 1, 1905	130.26	
To delinquent list	231.61	
To exonerations	5.85	
To discount on $446.40	11.16	
To commissions of sheriff	82.35	
To amount due John Adams sheriff	33.61	2885.01

CONTRA, CR.

By levy on real and personal property	1838.65	
By railroad tax certified	58.81	
By delinquent sales	70.63	
By delinquent tax collected	10.00	1978.09
Indebtedness above assets		906.92

SHERIFF, OTTER ROAD, DR.

To total amt. rec'd levy and other sources	1978.09	
To balance due sheriff	33.61	
	2011.70	

CONTRA, CR.

By vouchers cancelled	1680.73	
By delinquent list, exonerations, discount and sh'ff's commissions	330.97	
	2011.70	

KANAWHA DISTRICT ROAD, DR.

To orders July 1, 1905, to July 1, 1906	173.58	
To outstanding order July 1, 1905	11.50	
To delinquent list	2.83	
To exonerations	.07	
To discount on $96.50	2.41	
To commissions of sheriff	11.14	201.54

313 CONTRA, CR.

By levy on realty & personalty.....	142.76	
By delinquent sales.....	1.86	
To Rec'd from Geo. Goad, in full.....	303.06	447.68
Assets above indebtedness		246.14

SHERIFF, KANAWHA ROAD, DR.

To total amt. rec'd from levy & other sources	447.68	

CONTRA, CR.

By vouchers cancelled	163.08	
By delinquent list exonerations, discount & sh'ff's commissions	16.45	
To bal. due fund from sheriff.....	268.15	
	447.68	

SALT LICK ROAD, DR.

To orders July 1, 1905 to July 1, 1906....	728.78	
To order outstanding July 1, 1905.....	139.49	
To amt. due George Goad, July 1, 1904...	168.24	
To delinquent list	20.81	
To exonerations	3.75	
To discount on $424.88.....	10.62	
To commissions of sheriff.....	31.06	
To amt. due Jno. Adams, sheriff July 1, 1906	19.57	1122.32

CONTRA, CR.

By levy on realty and personalty.....	628.24	
By railroad tax	106.97	
By delinquent land sales.....	18.10	753.31
Indebtedness above assets.....		369.01

314 SHERIFF, SALT LICK ROAD, DR.

To total rec'd from levy and other sources	753.31	
To amt. due sheriff to balance.....	19.57	
	772.88	

CONTRA, CR.

By vouchers cancelled	706.64	
By delinquent list, exonerations, discount & sh'ff's commissions	66.24	
	772.88	

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315 STATE OF WEST VIRGINIA, *Braxton County, To wit:*

I, E. W. Hefner, Clerk of the County Court of the County and State aforesaid, do hereby certify that the foregoing is an itemized account of the receipts and expenditures of the road fund for the various districts, of the County during the fiscal year ending July 1, 1906.

Given under my hand this the 4th day of August, 1906.

E. W. HEFNER, *Clerk.*

316 VII.

To the Honorable County Court of Braxton County:

The undersigned commissioners beg leave to submit the following report of settlement with E. G. Rider, Agent for the said Court in the matter of the refunding of the 6% interest bearing coupon bonds, issued by the County of Braxton.

We find that $40,000.00 of the 4% interest bearing coupon bonds were sold by said Rider, and that he collected $72.00 interest on the moneys deposited in the Sutton Bank from the proceeds of sale of said bonds, making the total amount for which he should be charged, $40,072.00.

Of this sum he has paid in taking up bonds and paying interest thereon the sum of $38,507.30 leaving a balance due Braxton County from said Rider of $1564.70. Following will be found a statement of the amount received by said Rider and the amount paid by him and we file herewith, as vouchers, the bonds taken up by him, and the coupons representing the interest paid by him:

E. G. Rider, Trustee, to Braxton County, DR.

To proceeds of Braxton County 4% coupon bonds, numbered one to eighty inclusive, $500.00 each.....	$40,000.00
To Interest collected from Sutton Bank.....	72.00
	$40,072.00

CONTRA.

By amount paid A. C. Scherr, Auditor, for Braxton County 6% coupon bonds Nos. 16 to 40 inclusive, of $500.00 each	$12,500.00
By Interest paid on same.....	437.50
317 By amount paid on Braxton County 6% coupon bonds Nos. 61 to 65 inclusive and 119 and 120	$3,500.00
" Interest on same from June 1st, 1902 to September 1, 1902	52.50
By amount paid on 6% coupon bonds Nos. 113 to 118..	3,000.00
" Interest on same to Sept. 8, 1902.....	376.20
By amount paid on 6% coupon bonds Nos. 41 to 60 inclusive	10,000.00
" Interest on same from June 1, 1901 to Feby. 1, 1902	400.00

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" Amount paid on 6% coupon bonds Nos. 73 to 77..	2,500.00
" Interest on same from June 1, 1902 to January 1, 1903	87.50
" Interest paid on 6% coupon bonds October 4, 1902 and interest on coupons.....	2,521.60
" Interest paid on bonds and coupons.....	3,132.00
" Amount due Braxton County from E. G. Rider to balance	1,564.70
	$40,072.00

It appearing from the foregoing statement that E. G. Rider agent, took up and cancelled on the 6% bonds, bonds Nos. 16 to 65 inclusive, and bonds 73 to 77 inclusive, and bonds 113 to 120 inclusive, and our information is, that John Adams took up and cancelled of said 6% bonds, bonds Nos. 1 to 15 inclusive and bond No. 66.

There is still outstanding of the 6% interest bearing coupon bonds, bonds Nos. 67 to 72 inclusive, and bonds Nos. 78 to 112 inclusive, or 41 bonds of $500.00 each representing an indebtedness of 20,500.00 on account of the old issue of bonds, and the whole of the new series amounting to 40,000.00.

Respectfully submitted,

JOHN ADAMS,
FRED. L. FOX, *Com's.*

318 STATE OF WEST VIRGINIA,
Braxton County Court, July 13", 1905.

The foregoing settlement was this day presented in open Court, approved by the Court and signed by the president.

Teste: E. W. HEFNER, *Clerk.*

A Copy:
Teste: E. W. HEFNER, *Clerk.*

(Endorsements:) E. G. Rider, Agent, and Braxton County. Copy Settlement on sale of Braxton County bonds. Filed as evidence on behalf of respondents, Aug. 9, 1906. Wm. B. Mathews, Clerk.

319 VIII.

To the Honorable W. G. Bennett, Judge of the Circuit Court of Braxton County, West Virginia:

The undersigned petitioner respectfully represents unto your honor that the jail of Braxton County was partially *dis*troyed by fire recently; and that the County Court of said Braxton County met in special session at the court house of said county on the 18th day of March, 1894, and by and order appointed Jacob Huffman, who is one of the commissioners of the said County Court, "a commissioner to have a temporary jail built on court house lot," that the only order appearing of record made by the said court in relation to the

id jail is in the words following: "The Court doth appoint Jacob uffman, commissioner to have a temporary jail built on court ouse lot;" and the said Huffman in pursuance of the order afore-id and of probable verbal direction of the court, not included in e said order, is proceeding to erect a wooden building on the court ouse square or lot, in the town of Sutton, to be used for such jail, id as the jail of Braxton County; and that he has caused lumber id timber to be placed on the ground for the purpose of erecting ch building.

Your petitioner further represents that the old jail, which was artially *dis*troyed by fire, as aforesaid, is entirely insufficient and nnot be repaired so as to make a sufficient jail for the said county; id the wooden structure proposed by the said County Court to be uild, and now in process of construction, as aforesaid, is entirely adequate or will be inadequate, and cannot be made a suitable or fficient jail for the County of Braxton; and the construction ereof is in direct violation of the provision of Section Fourteen, of hapter Thirty-nine, of the Code of West Virginia.

Your petitioner further represents that the County of Braxton requires a good and sufficient jail; and that it be built of stone, or of stone and brick; that the County of Braxton is a large county, embracing a territory of 640 square miles, and a opulation of something over eighteen thousand people, as petitioner elieves; and the said County should be provided with a suitable and fficient jail; and it is the duty of the County Court to provide such il as is required by law and the County is financially able to do so.

Your petitioner further represents that he is a citizen and tax payer f the County of Braxton; and that he petitions in behalf of himself nd all other citizens and tax payers of the said county of Braxton.

Your petitioner therefore prays that an alternate writ of mandamus may be awarded him directed to the County Court of Braxon County in the state of West Virginia, returnable to the Circuit ourt of said Braxton County on the 1st day of next term thereof, ommanding the said County Court of Braxton County to provide t the County seat of said county, to-wit: on the lot, or square desigated, as the public square in the town of Sutton upon which is tuated the court house of Braxton County, and which public square r lot, belongs to the county of Braxton, a suitable jail, with necesary furniture, to be built of stone or of stone and brick, as provided y law; and of suitable size for the requirements of said county of Braxton, sufficient for the convenient accommodation of those who ay be confined therein, and so that the convicts may be in apartents separate from each other, and from the other prisoners; and hat each and every apartment may be so constructed that it can e kept comfortable, or show cause if any it, the said County Court f Braxton County, can, why it should not do so.

F. J. BAXTER,
By COUNSEL.

W. E. HAYMOND, *Attorney.*

321 STATE OF WEST VIRGINIA, *County of Braxton, To wit:*

F. J. Baxter, the petitioner named in the foregoing petition being duly sworn says, that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information; and that so far as they are therein stated to be upon information he believes them to be true.

F. J. BAXTER.

Taken, subscribed and sworn to before me this 7 day of April, 1904.

C. H. BLAND, *Notary.*

(Endorsements:) F. J. Baxter *vs.* The County Court of Braxton County. Petition for Mandamus. Law Order Book No. 11, pages 192, 201. Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

322 IX.

STATE OF WEST VIRGINIA:

Circuit Court of Braxton County.

APRIL 29, 1904.

F. J. BAXTER
vs.
THE COUNTY COURT OF BRAXTON COUNTY.

Upon Mandamus.

F. J. Baxter this day presented his petition duly verified by affidavit, praying for an alternative writ of mandamus directed to the County Court of Braxton County, West Virginia, commanding it to provide at the County seat of said County, to-wit, on the lot or square designated as the public square in the town of Sutton, upon which is situated the Court house of Braxton County, and which public square or lot belongs to the County of Braxton, a suitable jail, with necessary furniture, to be built of stone and brick as provided by law, and of suitable size for the requirements of said County of Braxton sufficient for the convenient accommodation of those who may be confined therein, and so that the convicts may be in separate apartments from each other and from the other prisoners; and that each and every apartment may be so constructed that it can be kept comfortable, or to show cause why it should not do so, and having read and considered the said petition, it is ordered that an alternative writ of mandamus be awarded as therein prayed for, returnable to the second day of May next, and in said alternative writ of mandamus shall be set forth the material facts and allegations contained in said petition with sufficient fullness and distinctness to enable the respondent to plead or answer thereto and make

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ch defense thereto, if any it hath to make, as it may be advised is ght and proper to do.

A copy.

Teste: C. H. BLAND, *Clerk*.

(Endorsement:) Filed in open Court this 9th day of August, 906. Wm. B. Mathews, Clerk.

23 X.

TATE OF WEST VIRGINIA:

Circuit Court of Braxton County.

MAY 3D, 1904.

F. J. BAXTER
vs.
THE COUNTY COURT OF BRAXTON COUNTY.

Upon Mandamus.

The alternative writ of mandamus awarded against the County Court of Braxton County on the 29th day of April, 1904, in the ause returnable to the 2nd day of May, 1904, having been returned uly served on the defendant, the County Court of Braxton County nd the said defendant having failed to make any answer or return o the said writ, or to the petition in this cause, it is therefore con- idered by the Court that a peremptory writ of mandamus be warded directed to the said County Court of Braxton County, West Virginia, commanding the said Court to provide at the County seat f said County, to-wit, on the lot or square designated as the public quare in the town of Sutton, upon which is situated the Court house f Braxton County, and which public square or lot belongs to the County of Braxton, a suitable jail, with necessary furniture, to be uilt of stone and brick, as provided by law, and of suitable size for he requirement of said County of Braxton sufficient for the con- venient accommodation of those who may be confined therein, and o the convicts may be in separate apartments from each other, and from the other prisoners; and that each and every apartment may be so constructed that it can be kept comfortable.

A copy.

Teste: C. H. BLAND, *Clerk*.

(Endorsement:) Filed in open Court this 9th day of August, 1906. Wm. B. Mathews, Clerk.

324 XI.

Articles of agreement, made and entered into this twenty-first day of September, in the year, one thousand nine hundred and four, between the County Court of Braxton County, as party of the first part, hereinafter also called owner, and Elliott and Winchell, partners as Elliott and Winchell, as part of the second part, hereinafter also called contractor.

The said parties of the second part do hereby for themselves their heirs, executors, administrators or assigns, covenant, promise and agree to and with the said part- of the first part, heirs, executors, administrators or assigns, for the consideration hereinafter mentioned, to make, furnish, erect, perform and finish in a good, substantial, true, perfect and thoroughly workmanlike manner, The entire work of a Jail and Sheriffs' residence of good, proper and substantial materials, and in strict accordance with the drawings and specifications made by Holmboe and Lafferty, architects, bearing even date herewith, signed and made part of this agreement, and of which copies have been delivered to the Contractor.

The Contractor shall be furnished with the lines and levels of the building, and shall be given possession on or before the First day of October next, and the work aforesaid shall then be forthwith commenced, and be constantly prosecuted (delay caused by the elements excepted) and the materials promptly furnished and applied. All work to be done under the supervision and to the satisfaction of said Architect, (acting as the said owners agent,) and the entire work to be finished complete on or before the First day of January, one thousand nine hundred and six.

The said party of the first part, for himself, his heirs, executors, administrators or assigns, covenant-, promise- and agree- to and with said parties of the second part, to pay, or cause to be paid, to said party of the second part or legal representatives, for the true and faithful performance of all and every of the articles, covenants and agreements herein contained, the sum of Twenty three thousand, two hundred & seventy five Dollars, lawful money of the United States, as follows, (due allowance being made for subsequent
325 additions, deductions and alterations as provided for in this agreement).

Payments To be made in monthly installments of 90% of work then executed.

Second Payment,——

Third Payment,——

Fourth Payment,——

The last and final payment to be made within ten days after all the work shall be completed, and after all the materials and rubbish belonging to or furnished by said Contractor which are of no further use for the completion of said works, have been removed and all drawings and specifications have been returned.

Provided that for all payments a certificate shall be obtained from and signed by said Architect to the effect that under the terms

the contract the payments are properly due; said certificate in no ay lessening the full and final responsibility of the Contractor. If be subsequently discovered that any work or materials required cording to the drawings and specifications have been omitted or ot properly executed, said payments shall not exempt the Contractor om liability to replace or to execute such work according to the awings and specifications, and the terms of the contract.

Provided further, that if required, the Contractor shall furnish curity against mechanics' and other liens prior to payments by esenting the said Architect with a certificate signed and sealed the County Clerk, or Clerk of the office where liens are recorded, the effect that no liens or claims are recorded against said works account of said Contractor. If at the time when any payment erein agreed upon becomes due, there sh-ll be any lien or claim against said work chargeable to said Contractor for which the 26 Owner at any time may be made liable, said Owner shall have the right to retain and hold a sum sufficient to furnish complete security and indemnity against said lien or claim, and hold aid money until the lien or claim has been conclusively and finally ischarged, satisfied and cancelled. In the event of any such claim rising after the final payment has been made, for which the Owner ay legally be held liable and which — chargeable to the default of aid Contractor, the said Contractor shall refund to th Owner all ums of money which the Owner may expend in discharging and ancelling said liens or claims on said work or premises.

It is hereby further agreed by and between the said parties:

First. The drawings and specifications are intended to co-operate, o that any work, matter or thing exhibited in the drawings, and ot mentioned in the specifications, or *vice-versa,* shall be executed he same as if it were contained in and shown by both; without any harge whatsoever. All drawings and specifications are the property f the Architect. The Architect will from time to time as required, urnish all needful explanations of the true intent and meaning of aid drawings and specifications.

Fees, Labor, Materials, etc.

Second. The Contractor to pay all legal fees for permits, etc., ecessary to carry out this contract and at his own expense is to rovide all manner of labor, material, scaffolding, apparatus, models, noulds, implements, cartage and utensils of every description appertaining to and necessary for the proper performance of the several works. During the progress and until the completion of said work, he contractor is to provide a competent person who shall attend onstantly to the general supervision of the correct and exact making, preparing, lying out and locating of all patterns, moulds, models, nd measurements, relating to the work herein agreed upon, in ccordance with the drawings, specifications and directions of said Architect. The work when completed, shall be delivered in perfect epair, clean and in good condition.

Owners' Changes.

Third. If at any time during the progress of the work the Owner shall require any additions, alterations, deviations or omis-
327 sions from said contract, he shall have the right and power to make any changes desired, and the said changes shall in no way affect or make void the contract, but the difference in value shall be added or deducted from the amount of the contract by a fair and reasonable valuation which shall immediately be agreed upon in writing. When no agreement as to value is made, the Contractor, upon the receipt of the Architect's written order, shall proceed with the alterations, which shall be valued as provided for in the fifth article.

Termination of Contract by Default of Contractor.

Fourth. Should the Contractor at any time during the progress of said work cause any unnecessary or unreasonable neglect or suspension of the work, or neglect or refuse to supply a sufficiency of labor and materials of the proper quality, or to fail to comply with the terms of the contract, the Owner or his Agent upon the receipt of the Architect's certificate of such neglect, refusal or failure, and that there is good and sufficient cause for such action, may and shall have the right and power to enter upon and take possession of the premises and all materials thereon, and to discharge said Contractor and all employed under him, and to employ workmen by day's work or otherwise, and to provide materials sufficient to finish the work, after having given to said Contractor three days' notice in writing. The expense of the notice and the finishing of the various works will be deducted from the amount of the contract, or from any payments due or to be due said Contractor. In such an event the payments herein agreed upon shall not be due until the entire work shall be completed. Any balance due to the Contractor when the work is completed shall be paid to the Contractor by the Owner, but in case the expense for supplying materials and for completeing the work, or any expense for damage caused by the default of said Contractor, shall be in excess of the balance due to said Contractor, the Contractor shall reimburse the Owner for such difference. The Architect shall audit and issue a certificate (which shall be conclusive upon the parties, unless decided by arbitration as provided for in the fifth article,) certifying to the expense caused to the Owner through said default of the Contractor.

328 Arbitration.

Fifth. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by the Architect, whose impartial and just decision shall be final and conclusive, but should any dispute arise respecting the true value of the extra work, or of the work omitted by the Contractor, or the changes made by the Owner the same shall be referred to and valued by two competent disinterested persons, one employed

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by the Owner, and the other by the Contractor; these two shall have the power to select an umpire (having no connection with said work,) and the decision of any two of the aforesaid persons shall be final and binding on all parties. Each party to pay half of the expense of the reference.

Personal Injuries and Damage to Property.

Sixth. The Contractor shall be solely responsible for any injury or damage sustained by any and all person or persons or property during or subsequent to the progress and completion of the work hereby agreed upon, from or by any act or default of said Contractor; and shall be responsible to the Owner for all costs and damages which said Owner may legally incur by reason of such injury or damage, and that the said Contractor shall give all usual, requisite and suitable notices to all parties whose estates or premises being adjoining those upon which the work hereby agreed upon is to be done, may or shall be in any way interested in or affected by the performance of said work; and said Contractor shall also take all precaution against accidents by day or night, both in the streets and on the sidewalk as required by law.

Extra Work.

Seventh. No work shall be considered as extra unless a written order has been obtained for the same from the Architect or Owner or a separate estimate in writing shall have been submitted by the Contractor to the Architect or Owner, and their signatures obtained thereto; said order or estimate also stating the extension of time (if any) allowed. A weekly statement of extra "days' work" shall be delivered to the Architect or Owner, and all claims for extra work for which no valuation has been agreed upon shall be sub-
329 mitted to the Architect or Owner not later than ten days after the work is commenced.

Superintendence. Rejected Work and Material.

Eighth. The Architect or Superintendent, or other persons representing said owner or architect, to be accorded all due and sufficient facilities by the Contractor for the inspection and examination of the work and materials which are to be under their supervision and control, and that the Architect or Superintendent may condemn and reject any work or materials which do not conform with the drawings, specifications and contract and may require the same to be properly executed according to said drawings, specifications and the terms of the agreement. The removal of rejected work and materials shall be commenced by the Co-tractor within twenty-four hours after the receipt of a written notice from the Architect or Superintendent, and be continued until all said rejected work and materials is removed. All due care shall be taken by the Contractor to cover, protect and secure work from injury; and all damage re-

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sulting from the Contractor's negligence shall be made good by said Contractor.

Sub-Contracts.

Ninth. The contractor shall obtain the Architect's written consent to sublet, assign or transfer this agreement or any interest in said Contract, and each and every person employed by piece or day's work or sub-contract by the said Contractor in the furnishing of materials or performing of labor in the fulfillment, or execution of this agreement shall be in the opinion of the said Architect a suitable, competent and satisfactory person.

Insurance.

Tenth. From time to time as required the Contractor will insure his interest in the building, but the Owner will not be answerable or accountable for any loss of the Contractor by fire; when payments have been made to the Contractor, the Owner shall protect himself by insurance to cover his interest.

330 Additional Detail Drawings.

Eleventh. In addition to the general working drawings theArchitect will, upon receiving reasonable notice that the same are required, furnish such additional detail drawings which may be necessary, (all of said additional detail drawings so far as consistent with the original drawings to form part of this Contract), and in the execution, performance and fulfillment of this Agreement, the Contractor, shall not in any way deviate from the entire and exact intent and meaning of said detail drawings, should in his opinion any practical difficulty arise or occur; but should the Architect decide that some such deviation becomes necessary and unavoidable, the Architect will give the Contractor a written order to make such necessary deviations.

Reimbursements for Delay.

Twelfth. The Owner agrees not to delay the Contractor in the material progress of the work, by providing all labor and materials exclusive of this Contract; and in case of such delay the Owner agrees to pay the Contractor for any loss resulting therefrom; and the Contractor agrees to reimburse the Owner for any damage for which said Owner may become liable (as herein stated), by reason of any delay caused to the material progress of the work by said Contractor; said reimbursements to be exclusive of any payments for general damage otherwise provided for in this Agreement. The Architect to determine and fix the amount of damage or loss in both cases, or the amount shall be agreed upon by arbitrators as provided for in the fifth article.

Forfeit.

Thirteenth. Should the Contractor fail to finish all the work at the time agreed upon he shall forfeit and pay to the Owner by way of

liquidated damages the sum of —— Dollars per day for each and every day thereafter the said work shall remain unfinished; but should the Owner have caused the Contractor any delay in the execution of the contract, the Owner shall therefor allow the Contractor one day extension for each day of delay, unless upon the contingency provided for in the fourth article.

331 Unfor-seen Delays.

Fourteenth. Should the employees abandon the work through no default of said Contractor; or damage be caused to the work by fire, or by the exceptional action of the elements, or other injury to the work through no default of said Contractor, and for which said Contractor is not accountable, or should the neglect of any other Contractor obstruct or delay said Contractor in prosecuting and completing the work, then the Architect shall award and certify an extension of time beyond the time limit agreed upon, provided that in every case a written claim shall be presented, when such obstruction or delay shall occur. The stipulated damage shall be released for the period of time certified to by said Architect and no longer. From this award the Contractor may appeal, and submit the difference to arbitration as provided for in the fifth article. The Contractor shall give bond, with good security, payable to the County of Braxton in the penalty equal to the contract price herein, conditioned for the faithful performance of this contract.

In witness whereof, the said parties have hereto set their hands and seal, the day and year above written.

Witnesses:

(Signed) JOHN I. BENDER.
DAVID EVANS.
ELLIOTT & WINCHELL,
Per E. L. WINCHELL.

332 XII.

Contractor's Bond.

Know all men by these presents, That We, E. L. Winchell and W. H. Elliott, partners doing business under the firm name of Elliott & Winchell, as principal, and the Citizens Trust and Guaranty Company of West Virginia, a Corporation, under the laws of the State of West Virginia, as surety, are held and firmly bound unto the County Court of Braxton County, West Virginia, in the penal sum of twenty-three thousand, two hundred & seventy five ($23275) Dollars, good and lawful money of the United States of America, well and truly to be paid, and for the payment of which, we and each of us, hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Dated this thirtieth day of November, 1904.

The conditions of the above obligations are such that,

Whereas, the above bounded principal Elliott & Winchell has

entered or is about to enter into a certain contract with the above named obligee, a copy of which contract is hereto attached and hereby referred to and made a part hereof, as fully and to the same extent as if copied at length herein.

Now, if the above bounden principal shall well and truly keep each and every, all and singular, the matters and things in said contract set forth and specified to be by the said principal kept, done and performed, at the times and in the manner in said contract specified, and shall pay over, make good and reimburse to the above named obligee, all loss and damage which said obligee may sustain by reason of failure or default on the part of said principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect: Provided, however, and this bond is executed by the Citizens Trust and Guaranty Company of West Virginia (hereinafter called the Company), as surety, upon the following express conditions, which shall be conditions, precedent to the right of the above named obligee to recover hereunder.

333 1. The obligee shall keep, do and perform, each and every, all and singular, the matters and things set forth and specified in said contract, to be by the obligee kept, done and performed at the times and in the manner in said contract specified.

2. If, at any time, the above named principal shall, in any manner, fail, neglect or refuse to keep, do or perform any matter or thing, at the time and in the manner in said contract set forth and specified to be by said principal kept, done and performed, the obligee shall immediately so notify the Company in writing, by registered letter, prepaid, addressed to the Company, at its principal offices, in the city of Parkersburg.

3. If, at any time, it appear that the above named principal has abandoned the work, or will not be able, or does not intend, to carry out or perform the contract, the obligee shall immediately so notify the Company, in writing, by registered letter, prepaid, addressed to the Company, at its principal offices in the City of Parkersburg, and the Company shall have the right, at its option, to assume such contract and to sublet or complete the same, and all moneys due, or to become due thereafter, under said contract, including percentages agreed to be withheld until completion, shall, as the same shall become due and payable under the terms of said contract, be paid to the Company, and the Company, if it so elect, shall be subrogated to all the rights of said principal.

4. The full amount of the contract price to be paid by the obligee to the principal shall be payable and paid in cash—good and lawful money of the United States of America—and not otherwise, anything in said contract to the contrary notwithstanding.

5. All payments specified in said contract to be withheld by the obligee until completion of the work shall, as soon as the work shall have been completed, be paid to the Company; Provided, however, that if the principal shall have in every particular fully complied with the terms of said contract, so that the Company shall have been fully relieved from all liability, of whatsoever kind or nature,

334 under this bond, then such moneys may be paid by the obligee to the principal, instead of to the Company.

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6. The obligee shall, before paying to the principal any instalment coming due under said contract require the principal to produce receipted bill for all labor done, and materials furnished, in, for and about the work in said contract specified; and should the principal fail, neglect or refuse to produce such receipted bills, the obligee shall immediately so notify the Company, in writing, by registered letter, prepaid, addressed to the Company at its principal offices in the city of Parkersburg, and shall, upon demand, pay to the Company all moneys which would have been due and payable to the principal, had the principal produced such receipted bills; Provided, however, that if the obligee, having exercised due diligence in the matter, shall in good faith, pay over to the principal any instalment (except the last) of money due under said contract, believing that the receipted bills and vouchers produced by the principal cover all work, labor and materials, up to the date of such payment, and if it afterwards transpire that such were not the case, and that the obligee had been deceived and imposed upon by the principal as to such matters, the making of such payment shall not operate to relieve the Company from liability.

7. In the event of any changes or alterations being made in the plans or specifications for the work mentioned in said contract, which shall increase the cost of the work to be done by the principal, a fair and reasonable sum shall be paid by the obligee to the principal as compensation for such extra work, and the changes and alterations to be make, as well as the compensation to be paid for the same, shall be agreed upon in writing between the obligee and the principal, prior to the making of any such change or alteration; and no such changes or alterations which shall, in the aggregate, increase the cost of the work to be done by the principal in a sum more than equal to ten per cent. of the penal sum stated in this bond, shall be made without the written consent of the Company being first had and obtained.

8. The Company shall not be liable for any loss or damage occasioned by the death of, or injury to, any person or persons whomsoever.

335 9. The Company shall not be liable for any loss, costs or damages by reason of the infringemt of any patent, or of any actions, suits or proceedings growing out of, or with regard to, any patented article, or the validity of any rights under letters patent granted by the United States Government.

10. The Company shall not be liable for any damages occasioned by delay in the performance of the work called for by said contract, in excess of an amount equal to ten per cent. per annum upon the sum hereinbefore stated as the penalty of this bond.

11. The Company shall not be liable for any loss or damage sustained by the obligee as mortgagee or otherwise, except as the owner of the property.

12. The failure, neglect or refusal of the obligee to keep, strictly observe, and fully perform, each and every, all and singular, the matters and things hereinbefore stipulated and agreed to be done, kept or performed by the obligee, at the times and in the manner

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specified, shall relieve the Company from all liability under this bond.

13. Each, every and all of the covenants, undertakings, agreements and conditions in this bond specified, shall be and continue in full force, and binding upon the parties, anything whatsoever in said contract to the contrary notwithstanding.

14. No action, suit, or proceeding shall be had or maintained against the Company upon this bond, unless the same be brought and commenced within six months after the date fixed in said contract for the completion of the work: Provided, that if during such six months any matter necessary to be considered in determining the liability of the Company hereunder be involved in litigation in the Courts and the obligee so notify the Company, in writing, by registered letter, prepaid, addressed to the Company at its principal offices in the city of Parkersburg, the time in which such action, suit or proceeding may be brought shall be extended to sixty days after the termination of such litigation.

336 Signed and sealed the day and date first above written.

ELLIOTT & WINCHELL. [SEAL.]
E. L. WINCHELL. [SEAL.]
H. W. ELLIOTT. [SEAL.]

[Citizens Trust & Guaranty Company of West Virginia, Corporate Seal.]

CITIZENS TRUST AND GUARANTY COMPANY OF WEST VIRGINIA,
By W. W. JACKSON, *President.*

Attest:

J. H. KNAPP, *Secretary.*

337 XIII.

We, E. L. Winchell and W. H. Elliott, partners doing business under the firm name of Elliott & Winchell, as principal, and Citizens Trust and Guaranty Company of West Virginia, a corporation under the laws of the State of West Virginia as surety, hereby assent to a change in the contract heretofore made between the County Court of Braxton County, West Virginia, and the above bounden Elliott & Winchell for the erection of a jail and Sheriff's residence at Sutton, West Virginia, which contract was made on the 21st day of September, 1904, and by the terms of which contract said building was to be completed on or before the first day of January, 1906; and we agree that the time for the completion of said building may be extended to the 31st day of October, 1906, and that all of the conditions and provisions of the bond heretofore given on the 30th day of November, 1904, for the performance of the above mentioned

contract shall be and remain in full force under this extension, the same as if no change had been made in the contract.

Sealed with our seals and dated this 27th day of June, 1906.

ELLIOTT & WINCHELL,
By ELLIOTT & WINCHELL,
Per E. L. WINCHELL.
CITIZENS TRUST AND GUARANTY COMPANY OF WEST VIRGINIA,
By W. W. JACKSON, *President.*

[Citizens Trust & Guaranty Company of West Virginia. (Corporate Seal.)]

Attest:
J. H. KNAPP, *Secretary.*

(Endorsements:) Filed in Co. Clerk's Office, Dec. 13, 1904. E. W. Hefner, Clerk. Filed in open Court as evidence for respondents, Aug. 9, 1906. Wm. B. Mathews, Clerk.

338 XIV.

To which answers and returns the petitioners filed their replication, which is in words and figures as follows:

In the Supreme Court of Appeals of West Virginia.

STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents and Inhabitants of Braxton County,

versus

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of Said Court, and JOHN I. BENDER and E. H. CUNNINGHAM, Commissioners of said Court.

On Application for Mandamus.

The joint and separate exception, demurrer and special and general replication to the return of the respondents in the above styled cause.

The petitioners in the above entitled application for a writ of mandamus, except to the return filed to the alternate writ heretofore awarded herein for legal insufficiency, and demur thereto, and for cause of demurrer say that said return is insufficient in law, and without waiving their said exception and demurrer, the petitioners reply generally to said return, and also make the following special replication thereto;

First. Petitioners expressly deny that said county court and the individual respondents, commissioners thereof, ascertained and

found in accordance with the statute law of this state at a regular term of said county court, held July 18th, 1906, that it would require at the least the sum of Fifty seven thousand one hundred and forty six dollars ($57,146.00) to be raised in taxation by the county levy for the purposes authorized and provided by law, and deny that it will appear from any statement of the estimate of said county court entered of record by the clerk thereof on the proper record
339 book, that such estimate was or is correct, or that such sum was or is necessary to be raised by taxation for county purposes for said year, and petitioners aver and charge that heretofore, to-wit, on the 24th day of July, 1906, petitioners, through their attorney, requested and directed the clerk of said county court to furnish them with a duly certified copy from his record of all the matters and things appearing thereon relative to the assessment made and levied for the year 1906, and in compliance therewith said clerk made out and certified a copy from the record of the levy actually made for said year by said court, the original of which copy is here filed as a part of this replication, marked "Exhibit A," and as will appear therefrom, there was no estimate made as provided by law, for the current expenses and indebtedness of said county for said year. Petitioners are not advised as of their own knowledge whether or not said estimate as is required by law, was actually made by said court and entered of record on the records thereof, and have no knowledge thereof, save such as was furnished them by the clerk of said court upon request of their said attorney as hereinbefore stated and as in said copy set forth, but petitioners specifically aver and charge that if, as a matter of fact, any such estimate as alleged in said return was actually made and entered of record purporting to show that the sum of $57,146.00 was necessary to be raised for county purposes for the year 1906, that the same was greatly and grossly excessive, erroneous, false, untrue and unjustifiable in fact, and that no such amount even approximately was or is actually necessary and proper to be raised for said year for the purposes authorized by law, and petitioners affirmatively aver and charge that no amount in excess of the sum which said county court was authorized by chapter forty-eight of the Acts of 1905, to raise by levy for said year, to-wit, the sum of $28,457.00, was necessary or
340 proper to be estimated for such purposes, or was needed and could properly be expended for the purposes authorized by law for and during the year 1906, and petitioners specifically aver and charge that for any and all purposes necessary, proper or in any way authorized by law to be raised by levy by said county court during said year, no sum in excess of said sum of $28,457.00 was necessary, and that such fact was well known to said county court at the time that such estimate was made and entered of record, if in fact this was ever done.

Second. Petitioners specifically deny the allegation in the second paragraph of said return to the effect that a levy which would produce the sum of $28,457.96 would fall short of the amount necessary to meet the current expenses of said county and such of its debts and obligations as it was obliged to pay during the year 1906 to the ex-

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ent of $28,688.04, or to any other extent or amount, and aver that uch a levy as said county court was authorized to make under and ursuant to chapter forty-eight of the Acts of 1905, was and is amply ufficient to pay the current expenses of said county for said year 1906, and all of its debts and obligations such as it was obliged or ould be properly required to pay during the year 1906.

Third. Petitioners are not informed as to whether or not said espondents were advised as to the effect of said chapter forty-eight f the Acts of 1905, as applicable to said county court of Braxton County being unconstitutional and void or not, but aver and show hat such advice, if received, cannot and does not have any effect whatsoever as to the validity and legal effect of said act.

Fourth. Petitioners aver, charge and show with reference to the ourth paragraph of said return, that it will appear from said return nd exhibits filed therewith, that it was only necessary in order to provide for a sinking fund which would pay off and dis-
341 charge the bonded indebtedness of said county, to provide the sum of $1,250.00 during the year 1906, and to pay the interest on the bonded debt; as claimed in said return, the sum of $3,000.00, which would include the interest claimed to be over-due t the beginning of said fiscal year, as well as the interest accruing nd becoming due during the year 1906, and petitioners therefore how that even according to the face of said return and the claim hereof, that said aggregate amount of ten per cent. so levied for nterest and sinking fund was greatly in excess of the amount necesary to be raised during the said year for such purposes, and exceeded such amount to the extent of $5,920.00.

Fifth. Petitioners specifically deny the allegation of the fifth paragraph of said return in detail, and aver as follows:

(1) Petitioners deny that the Legislature of West Virginia is restricted in any manner or form whatsoever by the Constitution of this state from fixing and regulating a maximum amount which the county court of the various county- of this state are authorized by law to raise by levy for county purposes, and are advised and charge that the right of the legislature to fix a maximum rate or amount which may be raised by said county courts during any year, is full, plenary and without restriction of any kind, save and except that the legislature cannot authorize a levy to exceed ninety-five cents on each one hundred dollars valuation of taxable property, except in the manner provided by the Constitution, namely, by submitting the same to a vote of the people of such county.

(2) Petitioners deny that the proviso contained in chapter forty-eight of the Acts of 1905, purporting to relieve from the operation of such restriction the counties of McDowell and Gilmer render such Act unconstitutional or void either as a whole or in any part
342 thereof, and petitioners are advised and charge that if such proviso with reference to said counties of McDowell and Gilmer should be in any respect or particular contrary to the constitution of this state, that then and in such event the only effect thereof would be to render such proviso as to such counties null and void; and if such should be the legal effect thereof and such proviso should

in legal effect be null and void that such act would nevertheless, with such proviso excluded therefrom, be and remain a complete, valid and constitutional Act, applicable to all of the counties of this state, and that such Act with such proviso stricken therefrom would be a complete, perfect and effective Act in and of itself, valid and operative in every respect.

(3) Petitioners deny that said Act is in any respect invalid or unconstitutional as such special legislation or otherwise, by reason of any lack of uniformity of taxation in the various counties in the state, and aver and show that said Act in no respect or particular fixes the valuation or the amount to be raised in taxes in any county in said state, but on the contrary, leaves the same wholly within the power of the county courts of the various counties and subject only to the maximum in said Act prescribed, namely, an inhibition against any county to raise by taxation for the year 1906 an amount to exceed in the aggregate seven per cent. over and above the amount raised in the year 1904, and that under and below said maximum so fixed the power of said county court to adopt any rate of taxation or to raise any amount which they may deem proper, is left and remains full and plenary.

(4) Petitioners deny that such proviso in any way violates section 10 or Article 1 of the constitution of the United States
343 forbidding any state from passing any law impairing their obligations or contracts, and deny that said Act in any manner or form, directly or indirectly impairing the obligations of any contract of the county court of said Braxton County, and on the contrary, petitioners specifically aver and charge that such Act of 1905 leaves the County Court of Braxton County amply able to pay off and discharge all of its contracts and obligations contracted prior to the passage of said Act, and does not either materially or to any extent restrict or impair any contract or obligation legally made or incurred by said County Court, or the ability of said County Court to fully pay off and discharge any and every contract made, or obligation incurred by it. Petitioners admit that in the year 1899 the county court of Braxton county subscribed $60,000.00 capital stock of the Weston and Elk River Railroad, and for such purpose issued six per cent. bonds to the aggregate amount of $60,000.00, redeemable in thirty years, or at the pleasure of the county in ten years, with interest to be paid annually at the National Exchange Bank of Weston, and that subsequently, in 1901, $40,000.00 of said bonds were refunded into new bonds under authority of the Act of the Legislature, bearing four per cent. interest, payable semi-annually, but petitioners specifically deny that there are still outstanding and unpaid of said *said* six per cent. bonds $10,000.00, and on the contrary, aver and show that all of said six per cent. bonds, with the exception of about $2000.00, have been paid off, taken up and canceled. Petitioners deny that at the time of the issuance of said bonds there was no restriction upon the power of the county court of said county to make and lay a levy for the purpose of paying off and discharging the same, and aver and charge that said county

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court at no time was authorized by law to make a levy except
344 for an amount sufficient annually to pay off the interest accruing thereon, and to provide a sinking fund, proportionate to the number of years for which said bonds should run, to meet and pay off the principal thereof, and further aver that at the time of the issuance of such bonds and at all times, the bondholders and creditors of said county had actual knowledge as well as constructive notice that the rate of the levy which such county court could make and lay for such purpose or for any purpose, was entirely within the power and control of the legislature of this state to regulate, and such bondholders and all other creditors of said county had actual knowledge as well as constructive notice that the amount which said county court during any one year at or after the time of the issuance of such bonds could legally raise by levy could not exceed and did not as matter of fact equal the amount which said county court is authorized under the present law to raise by levy for the year 1906. Petitioners specifically deny that the effect of chapter forty-eight of the Acts of 1905, restricts or impairs the powers of said county court to carry out all of its contracts and discharge all of its obligations of every kind and description, including the payment of said bonds at their maturity, together with the current expenses of said county, and aver and charge that the levy authorized thereby is amply sufficient for such purposes and for the discharge of all legal obligations and contracts of said county, and hence petitioners deny said Act is unconstitutional as contrary to the provisions of the constitution of the United States, or for any other cause.

(5) Petitioners on information and belief deny that there were or are outstanding county orders on the county treasurer of said county amounting to $9,421.00, or to any other sum whatsoever, and call for the strictest and most complete proof of such allegation
345 should the court deem the same material, and in the event that it should be shown that any such county orders are outstanding, petitioners deny the legality and binding effect thereof.

Petitioners further deny that there was or is any legal indebtedness amounting to $15,000.00, or to any other sum, on account of the building of a jail for said county, which the defendants had been compelled by mandamus to build, or otherwise, and deny that the power exists in any court to, by mandamus compel said county court to incur an indebtedness not authorized by law for the purpose of building a jail, or for any other purpose, except in the manner provided by the constitution and statute law of this state, and aver that no such liability was or has been incurred by said county court for such purpose in any manner authorized by law or in any manner legally binding upon said county; and petitioners affirmatively aver and charge that all liability of any kind against said county due or to become due during said fiscal year on account of the construction of such jail, has been paid off and discharged in full, and that no such sum or amount is due or will become due therefor during said year, and that if any amount should remain unpaid or should become due and payable during said fiscal year, that the levy authorized by said Act of 1905, will be and is sufficient to pay off and

discharge the same, together with the other indebtedness and current expenses of said county.

Petitioners further aver and show that the indebtedness due to said Tully for constructing portions of bridges in said county can be met and discharged by a levy in accordance with and not to exceed the amount authorized by said Act of 1905, and that therefore said Act in no way impairs or effects the obligations of the said county to the said Tully. Petitioners are advised and charge that
346 the assignees of said Tully, if any there be, are in no wise necessary or proper parties to this proceeding, and deny that they should be made parties to this proceeding.

Petitioners deny the allegation of said return with reference to the alleged amounts necessary to be raised by levy as set forth and shown in the so-called corrected estimate filed as an exhibit with said return, and deny that said corrected estimate is of any force or validity whatsoever or was ever made by said county court in any manner whatsoever, or that any such corrected or amended estimate is authorized by law to be made, and particularly and expressly deny the truth of the matters therein as an original proposition, even if the same were authorized by law or had any legal effect.

Petitioners aver that even if it be true that there is still outstanding and unpaid of said $10,000.00 of said six per cent. railroad bonds, that the said bonds are at this time not due and payable, and that there was no obligation upon the part of the said county court to make any levy upon the taxable property of said county for the year 1906 to pay the same, and petitioners further aver that a sinking fund has been levied by said county court in prior years and collected by the sheriff, sufficient to meet the said $2000.00 of railroad bonds, which said sum so levied for and collected as a sinking fund, was by an order of the said county court authorized to be loaned out to certain citizens of Braxton County, and that said sums of money so loaned out are collectible and can be collected and applied to the payment and discharge of any of the balance due on said bonded indebtedness, and should be collected and applied for said purpose.

C. W. DILLON, *State Tax Comr.*
AMOS BRIGHT.
JOHN M. MARPLE.
HENRY BENDER.
W. C. BAXTER.

By Counsel, MOLLOHAN, McCLINTIC & MATHEWS.

347 STATE OF WEST VIRGINIA, *County of Kanawha, To-wit:*

Amos Bright, being first duly sworn, says that he is one of the petitioners named in the foregoing replication, and that he has read the same and knows the contents thereof; and that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information, and that so far as they are therein stated to be upon information, he believes them to be true.

AMOS BRIGHT.

Subscribed and sworn to before me, a Notary Public of said County of Kanawha, this 9th day of August, 1906.

W. GORDON MATHEWS,
Notary Public.

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

348 EXHIBIT "A" WITH REPLICATION.

At a County Court held for the County of Braxton, at the Court house thereof, on Saturday, July 14th, 1906, present Jacob Huffman, President, and John I. Bender and E. H. Cunningham, Commissioners;

The following order was entered:

The Court doth lay a levy of *Fifty Cents*, for County purposes, on each one hundred dollars valuation of Real & Personal property as assessed in the County of Braxton for the ensueing year.

The Court doth lay a levy of *Five Cents*, on each one hundred dollars valuation of Real & personal property as assessed in the County, for the ensueing year, for the purpose of creating a sinking fund to pay the bonded indebt*iness* of the County.

The Court doth lay a levy of *Five Cents* on each One hundred dollars valuation of real and personal property, as assessed in the County, for the ensueing year for the purpose of creating a fund to pay the interest on the bonded debt of the County.

The Court doth lay a levy of *Five Cents* on each One hundred dollars valuation of real and personal property as assessed in the County of Braxton in each of the Magisterial Districts for the ensueing year, for the purpose of keeping up roads in said Districts.

A copy:
Teste

E. W. HEFNER, *Clerk.*

(Endorsement:) Filed in open Court Aug. 9, 1906. Wm. B. Mathews, Clerk.

349 STATE OF WEST VIRGINIA, *To-wit:*

I, Wm. B. Mathews, Clerk of the Supreme Court of Appeals of the State of West Virginia, do hereby certify that the foregoing writing is a true and correct copy of the transcript of the record in the case of State of West Virginia, at the relation of C. W. Dillon, State Tax Commissioner, and others, *v.* County Court of Braxton County and others, as the same appears from the records of my office.

Given under my hand and the seal of said Court this 16th day of August, 1906.

[Seal Supreme Court of Appeals, West Virginia.]

WM. B. MATHEWS,
Clerk Supreme Court of Appeals.

350 In the Supreme Court of Appeals of the State of West Virginia.

THE STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Taxpayers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of said Court; JOHN I. BENDER, and E. H. CUNNINGHAM, Commissioners of said Court.

The petition of the County Court of Braxton County, a corporation, Jacob Huffman, President of said Court and E. H. Cunningham, one of the Commissioners of said Court, by Jake Fisher and George E. Price, their attorneys, respectfully showeth that in the above entitled suit in mandamus pending in the said Supreme Court of Appeals of West Virginia, a final judgment and order was entered by said Court on the 9th day of August, 1906, against your petitioners, the said Supreme Court of Appeals of West Virginia being the highest Court of the said State of West Virginia in which a decision in said suit could be had. In this suit an alternative writ of mandamus was awarded against your petitioners, and John I. Bender, one of the Commissioners of said County Court of Braxton County, requiring them to convene as a County Court and to lay a levy upon the taxable property of said Braxton County for county purposes, including district road taxes, at so many cents on the one hundred dollars valuation thereof as will produce a sum that will not exceed, by more than seven per cent. (7%), the aggregate amount of taxes levied by said County Court in the year 1904, for such purposes, it being alleged in the petition and the said alternative writ that a levy which had already been laid by your petitioners for said year for said purposes of fifty cents on the hundred dollars for county purposes; five cents for the sinking fund to pay the bonded indebtedness of the county; five cents for interest on said bonded debt, and five cents in each district for keeping up the roads
351 was illegal and void, as it exceeded the restriction contained in Section 29 of Chapter 39 of the Code of West Virginia, as amended by Chapter 48 of the Acts of 1905, which prohibits any County Court from levying taxes, including district road taxes, for the year 1906, which shall exceed by more than seven per cent. (7%), the aggregate amount of taxes levied by it in the year 1904.

Upon the return day of this alternative writ, your petitioner filed its return and answer thereto, setting forth that in 1889, prior to the passage of said restrictive act of 1905, said County Court of Braxton County, as authorized by a vote of the people of said County, issued its bonds to the amount of $60,000.00 in aid of the Weston and Elk River Railroad Company, which bonds were redeemable in thirty years or at the pleasure of the County after ten years; interest at the rate of six per cent. (6%) thereon, being payable annually; that

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$40,000 of said bonds had subsequently been refunded in four per cent. (4%) bonds, and that there were $10,000 of said six per cent. (6%) bonds still outstanding and which were now payable by the county; that there was an indebtedness of $770 with interest thereon amounting, both principal and interest to $10460 due on orders issued to one J. V. Tully for building abutments for four bridges, which orders were issued in 1889 and 1900, the validity and binding effect of which orders upon the county, had been established by a decree of the Supreme Court of Appeals of West Virginia in the suit of A. L. Taylor and others against the County Court of Braxton County; that there was an indebtedness of $15,000 due on account of the building of a jail for said county which your petitioner had been compelled to build by mandamus issued by the Circuit Court of said Braxton County; that at the time said railroad bonds were issued there was no limitation upon the power of the said County Court to levy taxes for the payment of the interest and provide
352 for the sinking fund for said bonds; that at the time said Tully orders were issued and said jail contract was made and the indebtedness incurred there was no restriction upon the power of the County Court to levy taxes for the payment of said obligations, except that contained in Section 7 of Article 10 of the Constitution of West Virginia, prohibiting the County Court from levying taxes in excess of ninety-five cents on the hundred dollars; that in addition to the above indebtedness there were outstanding valid county orders that had to be provided for in said levy of 1906, amounting to $9421 on the county fund; that an estimate had been made prior to the making of said levy of the amount necessary to be raised by said levy as provided by law, and that according to said estimate it was necessary to raise $12600 for the county expenses, $3300 for commissions, delinquent taxes, exonerations &c., and provide for the above indebtedness; and that by said estimate it was ascertained that it would require $57146 to meet the current expenses of the county and pay its debts and obligations which had to be provided for out of said levy of 1906; that in point of fact, the said county expenses would probably amount to as much as $15,000 and it was necessary to provide a road fund of at least $5000, making an aggregate to be raised considerably more than $57146 aforesaid; that if defendants were restricted in making the levy as required by said act of 1905, it would not be able to raise sufficient money to pay its necessary current expenses and the amounts necessary to be paid upon its said indebtedness which was incurred prior to the said act of 1905, and that therefore the effect of said act was to impair the obligations of its said contracts and was, therefore, contrary to Section 10 of Article 1 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligations of contracts.

State shall pass any law impairing the obligations of contracts.

353 To this return and answer plaintiffs filed a demurrer and special and general replication, and upon the hearing of said suit upon the pleadings and proof offered by petitioners the said Supreme Court of Appeals of West Virginia awarded a peremptory writ of mandamus against your petitioner, requiring it to lay a levy upon

the taxable property of said county for the county purposes, including district road taxes, at so many cents on the one hundred dollars' valuation thereof, as will produce a sum that will not exceed, by more than seven per cent. (7%), the aggregate amount of taxes levied by it in the year 1904 for such purposes, the effect of which de ision is to prevent the said County Court of Braxton County from raising sufficient taxes to pay its current expenses and to pay the obligations aforesaid and thereby impairs the obligations of its said contracts and violates the Constitution of the United States and presents a final question of which the Supreme Court of the United States has cognizance and jurisdiction. And your petitioner avers that the said Supreme Court of Appeals of West Virginia in rendering said decision, erred to the manifest prejudice and damage of your petitioner.

Wherefore, your petitioners pray for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of Appeals of West Virginia and the Judges thereof for the correction of the errors complained of as above set forth. And that a transcript of the record, papers and proceedings in the said case in the Supreme Court of Appeals of West Virginia, duly authenticated, may be sent to the Supreme Court of the United States, and that the errors complained of may be reviewed by the Supreme Court of the United States and the judgment aforesaid reversed.

THE COUNTY COURT OF BRAXTON COUNTY,
JACOB HUFFMAN, *President, and*
E. H. CUNNINGHAM, *Commissioners of said Court,*
By Counsel.

JAKE FISHER AND
GEO. E. PRICE, *Counsel.*

354 In the Supreme Court of Appeals of West Virginia.

THE STATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER, and W. C. BAXTER, Citizens, Residents, and Tax-payers of Braxton County,

v.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of said Court; JOHN I. BENDER, and E. H. CUNNINGHAM, Commissioners of said Court.

Assignment of Errors.

The County Court of Braxton County, Jacob Huffman and E. H. Cunningham, defendants in this action, in connection with their petition for a writ of error, make the following assignment of errors which they aver occurred in the trial of said cause.

(1.) The Court erred in holding the levy heretofore made by the County Court of Braxton County for 1906, of fifty cents for county purposes, five cents for the sinking fund to pay railroad bonds, five cents for interest on said bonds and five cents for keeping the roads in each district in repair to be illegal and void.

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(2.) The Court erred in holding that the proviso contained in Section 29 of Chapter 39 of the Code, as amended by Chapter 48 of the Acts of the Legislature of West Virginia of 1905, is valid as applied to Braxton County, and did not violate the obligations of the contracts of said county set out in the pleadings.

355 (3.) The Court erred in deciding that the County Court of Braxton County could not levy or assess taxes for the year 1906, which shall exceed by more than seven per cent. (7%) the aggregate amount of taxes levied by it in the year 1904.

(4.) The Court erred in awarding the peremptory writ of mandamus.

(5.) The Court erred in not holding and adjudging that the County Court of Braxton County had the power to levy sufficient taxes for 1906 to pay its current expenses and provide for the interest and sinking fund of the railroad bonds, to pay the Tully county orders, to pay the balance due on the jail debt, and to pay the other outstanding orders of the county.

Wherefore the defendants, the County Court of Braxton County, Jacob Huffman and E. H. Cunningham, pray that the said judgment may be reversed.

THE COUNTY COURT OF BRAXTON COUNTY,
JACOB HUFFMAN, *President, and*
E. H. CUNNINGHAM, *Commissioners of said Court,*
By Counsel.

JAKE FISHER AND
GEO. E. PRICE, *Counsel.*

356 UNITED STATES OF AMERICA,
Supreme Court of Appeals of West Virginia, To wit:

The originals of the foregoing petition for writ of error, assignment of errors and prayer for reversal, were lodged with the Clerk of the Supreme Court of Appeals of the State of West Virginia on August 20th, 1906, and the following endorsement made thereon—"Filed Aug. 20, 1906. W. B. Mathews, Clerk Supreme Court of Appeals of West Virginia."

WM. B. MATHEWS,
Clerk of Supreme Court of Appeals of West Virginia.

357 Know all men by these presents, That we, The County Court of Braxton County, a corporation as principal, and The Title Guaranty & Surety Company, as sureties, are held and firmly bound unto The State of West Virginia, for the use of C. W. Dillon, State Tax Commissioner, Amos Bright, John M. Marple, Henry Bender and W. C. Baxter in the full and just sum of One Thousand dollars, to be paid to the said parties certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of August, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the Supreme Court of Appeals, of the State of West Virginia in a suit depending in said Court, between The State of West Virginia *ex Rel.* C. W. Dillon, State Tax Commissioner, Amos Bright, John M. Marple, Henry Bender and W. C. Baxter, petitioners and The County Court of Braxton County Jacob Huffman President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court a peremptory writ of mandamus was awarded against the said respondents and the said respondents having obtained a writ of error etc. and filed a copy thereof in the Clerk's Office of the said Court to reverse the said writ in the aforesaid suit, and a citation directed to the said petitioners etc. citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said the County Court of Braxton County West Virginia shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plead good, then the above obligation to be void; else to remain in full force and virtue.

BRAXTON COUNTY COURT, [SEAL.]
By JAKE FISHER, *Spe. Att'y.* [SEAL.]
THE TITLE GUARANTY & SURETY COMPANY, [SEAL.]
By GEO. F. PARKER, *Attorney in Fact.*

Sealed and delivered in presence of—

PHILIP WALKER.
R. COCHRAN.

Approved by—

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

August 18th, 1906.

Filed this 20th day of August, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals, West Virginia.

358 UNITED STATES OF AMERICA,
Supreme Court of Appeals of West Virginia, To wit:

The original of the foregoing supersedeas bond was lodged with the Clerk of the Supreme Court of Appeals of West Virginia on August 20th, 1906, and the following endorsement made thereon: "Bond—Filed Aug. 20, 1906. W. B. Mathews, Clerk of Supreme Court of Appeals of West Virginia."

WM. B. MATHEWS,
Clerk of Supreme Court of Appeals of West Virginia.

359 & 360 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of West Virginia *ex rel.* C. W. Dillon, State Tax Commissioner, and Amos Bright, John M. Marple, Henry Bender and W. C. Baxter, petitioners, and The County Court of Braxton County, Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or
361 statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said respondents as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 3 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of August, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

362 Filed this 20th day of August, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals, West Virginia.

363 UNITED STATES OF AMERICA,
Supreme Court of Appeals of West Virginia, To wit:

The foregoing original writ of error was lodged with the Clerk of the Supreme Court of Appeals of West Virginia on August 20, 1906; and also at the same time and place a copy thereof was lodged with said Clerk with the following endorsement:

"Writ of Error—Copy for C. W. Dillon, attorney of record for the State of West Virginia *ex rel* C. W. Dillon, State Tax Commissioner, and Amos Bright, John M. Marple, Henry Bender and W. C. Baxter, Defendants in Error. Filed this 20th day of August, 1906. Wm. B. Mathews, Clerk of the Supreme Court of Appeals of West Virginia."

And on the 30th day of August, 1906, five other copies of said writ of error were lodged with said Clerk, one of said copies being addressed to each of said defendants in error, respectively; all of which copies, as well as said original writ, were duly endorsed as filed by the said Clerk on said respective dates.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of West Virginia.

364 UNITED STATES OF AMERICA, *ss:*

To The State of West Virginia *ex rel.* C. W. Dillon, State Tax Commissioner, Amos Bright, John M. Marple, Henry Bender, and W. C. Baxter, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Appeals of the State of West Virginia wherein The County Court of Braxton County, Jacob Huffman, President of said Court, and John I. Bender and E. H. Cunningham, Commissioners of said Court, are plaintiffs in error [redacted] you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, Associate Justice of the Supreme Court of the United States, this 18th day of August, in the year of our Lord one thousand nine hundred and six.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

CHARLESTON, WEST VIRGINIA, *August* 20, 1906.

I, C. W. Dillon, attorney of record for the defendants in error in the above entitled case, to wit, The State of West Virginia *ex rel* C. W. Dillon, State Tax Commissioner, Amos Bright, John M. Marple, Henry Bender and W. C. Baxter hereby acknowledge due service of

the above citation, and enter an appearance in the Supreme Court of the United States.

C. W. DILLON,
Attorney of Record for said Defendants in Error.

Filed this 20th day of August, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals, West Virginia.

365 In the Supreme Court of Appeals of the United States.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of said Court, and JOHN I. BENDER and E. H. CUNNINGHAM, Commissioners of said Court, Respondents, Plaintiffs in Error.

vs.

THE STATE OF WEST VIRGINIA, *Ex rel.* C. W. DILLON, State Tax Commissioner, and AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER and W. C. BAXTER, Petitioners, Defendants in Error.

In Mandamus.

To John I. Bender, a Commissioner of said County Court of Braxton County:

You are hereby notified that, on the 18th day of August, 1906, a Writ of Error was allowed said Plaintiffs in error by the Honorable David J. Brewer, Associate Justice of the Supreme Court of Appeals of the United States, to the final judgment and order of the Supreme Court of Appeals of the State of West Virginia, entered by said court on the 9th day of August, 1906, awarding an alternative Writ of Mandamus against the said plaintiffs in error, to wit, the County Court of Braxton County, Jacob Huffman, President of said Court, John I. Bender and E. H. Cunningham, Commissioners of said court, upon the petition of the said The State of West Virginia *ex rel.* C. W. Dillon, State Tax Commissioner, Amos Bright,
366 John M. Marple, Henry Bender and W. C. Baxter, citizens, residents and tax payers of said Braxton County, which writ is returnable within thirty (30) days from said date; and

That said Writ of Error, and copies thereof, together with a Supersedeas Bond, in the penalty of one thousand dollars ($1,000) duly approved, and the record of the proceeding in said Court of Appeals of the State of West Virginia, was duly filed according to law in the office of the Clerk of said court on the 20th day of August, 1906, and notice thereof duly given to said defendants in error, by reason whereof the said plaintiffs in error have obtain- a supersedeas to said final judgment and order of the Supreme Court of Appeals of the State of West Virginia;

And that the undersigned, the County Court of Braxton County, Jacob Huffman, President of *of* said Court, and E. H. Cunningham, a commissioner of said court, have duly filed certain assignments of error which, they aver, occurred in the trial of said mandamus pro-

ceeding by said Court of Appeals of the State of West Virginia, together with their prayer for the reversal of the said judgment of said court:

Now therefore you are further notified of the allowance of said writ of error and the pendency thereof, and the obtaining of said supersedeas, in order that you may join in the prosecution of said Writ of Error and file assignments of error to said judgment of said Supreme Court of Appeals of the State of West Virginia, and prayer for reversal thereof, and take such other steps in the premises as are necessary and you may desire.

367 THE COUNTY COURT OF BRAXTON COUNTY,
JACOB HUFFMAN,
President of said Court,
E. H. CUNNINGHAM,
A Commissioner of said Court,
By Counsel.

JAKE FISHER,
GEO. E. PRICE,
Counsel.

STATE OF WEST VIRGINIA, *County of Braxton, To wit:*

On this 3 day of September, in the year of our Lord one thousand nine hundred and six, personally appeared W. C. Hefner before me, the subscriber, a Notary Public, in my said county of Braxton, and makes oath that he delivered a true copy of the within notice to the within named John I. Bender, on the 3 day of September, 1906, in the said Braxton County, West Virginia.

W. C. HEFNER.

Sworn to and subscribed before me, this 4 day of September, A. D. 1906, as witness my hand and official seal.

HUGH AMOS,
Notary Public.

Filed this 8th day of September, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals, West Virginia.

368 UNITED STATES OF AMERICA,
Supreme Court of Appeals of West Virginia, To wit:

"In obedience to the command of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

Witness my hand and the seal of the Supreme Court of West Virginia, this 10th day of September, 1906.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of West Virginia.

[Seal Supreme Court of Appeals, West Virginia.]

9 *Taxation of Costs.*

STATE OF W. VA. *ex Rel.* DILLON ET AL.
vs.
COUNTY COURT OF BRAXTON CO. ET AL.

Costs in the Supreme Court of Appeals.

Petitioners' costs:

erk	$7.45
inting Record	.....
erk of Circuit Court for Transcript	.....
eriff John Adams serving Alternative Writ	3.00
" " " serving Peremptory Writ	3.00
der of Publication	.....
torney	.....

Respondents' costs:

erk Including this transcript	54.10
inting Record	.....
erk of Circuit Court—supp'l Transcript	.....
serving notice	.....
mages, Code Chap. 135, Sec. 27	.....
torney	.....

Attest:

WM. B. MATHEWS, *Clerk.*

70 In the Supreme Court of the United States.

HE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, President of said Court; and JOHN I. BENDER and E. H. CUNNINGHAM, Commissioners of said Court, Respondents, Plaintiffs in Error,

v.

TATE OF WEST VIRGINIA *ex Rel.* C. W. DILLON, State Tax Commissioner; AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER and W. C. BAXTER, Citizens, Residents and Taxpayers of Braxton County, Petitioners, Defendants in Error.

In Mandamus.

Stipulation of Counsel.

Whereas, on the 18th day of August, 1906, the County Court of raxton County, Jacob Huffman, President of said Court, and E. H. unningham, one of the Commissioners of said Court, presented to he Honorable David J. Brewer, Associate Justice of the Supreme ourt of the United States, their petition for a writ of error to a nal judgment and order entered by the Supreme Court of Appeals

of the State of West Virginia on the 9th day of August, 1906, in the above entitled proceeding, awarding a peremptory writ of mandamus against them and the said respondent John I. Bender, to-
371 gether with certain assignments of errors, which, they averred, occurred in the trial of said case, and their prayer for the reversal of said judgment;

And whereas, although the said John I. Bender did not join in said petition for said writ of error, or in said assignment of errors, or prayer for reversal, a writ of error was awarded by the Honorable David J. Brewer to all of said respondents, including the said John I. Bender, as will appear from said writ of error and the record in this case now remaining in the Supreme Court of the United States, as if the said John I. Bender had joined in the petition for said writ of error with his co-respondents;

And whereas, a question has arisen as to the regularity and validity of the said writ of error, and the said application therefor, and counsel for the County Court of Braxton County, Jacob Huffman and E. H. Cunningham, have commenced proceedings to cure the irregularity and error, if any, in the obtaining of the writ of error aforesaid, and to obtain a new writ of error;

And whereas, to avoid the delay and expense of correcting said defects, and of obtaining a new writ of error, it has been stipulated and agreed between the undersigned counsel for the defendants in error, and for the said County Court, Huffman and Cunningham, that the irregularity and error aforesaid in the application for the said writ of error awarded by Justice David J. Brewer in this proceeding as aforesaid, and in said writ of error as so awarded, be cured and waived so far as it lies in the power of said counsel,
372 and to this end it is Agreed and Stipulated between the undersigned counsel for said parties as follows:

1. That all error and irregularity, if any, in the application for said writ of error, and in said writ of error as awarded, caused by, or in any way due to, the failure of the said John I. Bender to join with his said co-respondents in the petition for said writ of error and in said assignment of errors and prayer for reversal, or his failure to join otherwise in the application for said writ of error, be, and the same are hereby waived; and that said writ of error shall be treated and considered in all respects as regular and valid as if the said John I. Bender had united with his said co-respondents in the petition for the same, and in the aforesaid assignment of errors and prayer for reversal, and as if said writ of error had been awarded upon the joint application of all said respondents;

2. That counsel for said County Court of Braxton County, Jacob Huffman and E. H. Cunningham, may enter their appearence in the Supreme Court of the United States for the said John I. Bender, and that all said parties, who were respondents in the state Court in this proceeding, shall be treated and considered as plaintiffs in error in the Supreme Court of the United States, as fully and to the same extent as if the said John I. Bender had united with his said co-respondents in their application for said writ of error;

3. That this stipulation shall be lodged with the Clerk of the

Supreme Court of the United States and made a part of the
73 record in this proceeding.

Witness the following signatures, this 28th day of Septem-
er, 1906.

W. MOLLAHAN,
GEO. W. McCLINTIC,
Attorneys of Record for said Defendants in Error,
GEO. E. PRICE,
Attorney of Record for said Plaintiffs in Error.

74 [Endorsed:] In the Supreme Court of the United States. The County Court of Braxton County *et al. v.* State of West Virginia *ex Rel.* C. W. Dillon, &c., *et al.* In Mandamus. Stipulation of County. Price, Smith & Spilman, Attorneys at Law, Charleston, W. Va.

75 [Endorsed:] File No. 20,402. Supreme Court U. S. October Term, 1906. Term No. 437. The County Court of Braxton County *et al.* P. E. *vs.* The State of West Virginia *ex Rel.* C. W. Dillon. Stipulation to correct record. Filed Oct. 4", 1906. Endorsed on cover: File No. 20,402. West Virginia supreme court of appeals. Term No. 437. The County Court of County, Jacob Huffman, president of said court, and John I. Bender and E. H. Cunningham, commissioners of said court, plaintiffs in error, *vs.* The State of West Virginia *ex rel.* C. W. Dillon, State tax commissioner, and Amos Bright, John M. Marple, Henry Bender, and W. C. Baxter. Filed October 5th, 1906. File No. 20,402.

SUPREME COURT OF THE UNITED STATES

No. 437.

THE COUNTY COURT OF BRAXTON COUNTY, JACOB HUFFMAN, PRESIDENT OF SAID COURT AND JOHN I. BENDER AND E. H. CUNNINGHAM, COMMISSIONERS OF SAID COURT, PLAITIFFS IN ERROR

vs. In Mandamus.

THE STATE OF WEST VIRGINIA, *EX REL* C. W. DILLON, STATE TAX COMMISSIONER, AND AMOS BRIGHT, JOHN M. MARPLE, HENRY BENDER AND W. C. BAXTER, DEFENDANTS IN ERROR

BRIEF OF COUSEL FOR PLAINTIFFS IN ERROR IN RESISTANCE OF MOTION TO DISMISS THE WRIT OF ERROR AND SUPERSEDEAS TO THE JUDGMENT OF THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA AND TO AFFIRM SAID JUDGMENT.

This is an original suit in mandamus brought in the name of the State of West Virginia, at the relation of C. W. Dillon, State Tax Commissioner, and Amos Bright and three others, citizens, residents, and tax payers of Braxton County against the County Court of Braxton County and Jacob Huffman, the President of said Court and John I Bender and E. H. Cunningham, Commissioners of said Court. The said Supreme Court of Appeals has original jurisdiction in cases of mandamus.

An alternative writ of mandamus was issued by said Court on the 25th day of July, 1906, returnable on the 8th day of August, 1906. On said last mentioned date the said defendants appeared and filed

their answers or returns to said alternative writ, and to these answers on returns the plaintiffs filed a special replication. Upon the hearing of the case, certain documentary evidence was introduced, and thereupon, on the 9th day of August, 1906, said Supreme Court of Appeals awarded a peremptory mandamus; and a writ of error was obtained from this Court by the defendants, the plaintiffs in error here.

STATEMENT OF FACTS.

On the 12th day of July, 1906, the County Court of Braxton County held a regular session of said Court at the Court House for the purpose of laying the county levy. Prior to the act of the Legislature of 1905, chapter 48, hereinafted more particularly referred to, section 29 of chapter 39 of the Code of West Virginia was as follows:

> "The county court of every county shall, at a regular session of said court, held not later than the month of July in each year, proceed to make up an estimate of the amount necessary to be levied for the current fiscal year to cover all county debts and liabilities payable during each year, including the probable expenditure for county purposes, the amount outstanding of unpaid orders on the county treasury, and a proper allowance for delinquent taxes, expenses of collection and contingencies; but deducting the money in the county treasury applicable to the service of the year, and county claims, the collection of which during the year may, in their opinion, be relied on; which estimate when approved by such Court shall be entered by the clerk in the proper record book. The said court shall thereupon levy so many cents on every hundred dollars of the valuation of the property taxable in the county, according to the last assessment thereof, for State taxation as will cover the estimated amount necessary to be raised for county purposes during the fiscal year."

Said section was amended by chapter 48 of the acts of the Legislature of 1905 by adding the following:

> "Provided, first, that no county court shall in the year nineteen hundred and five assess or levy taxes, including district road taxes, which shall exceed by more than five per cent. the aggregate amount of taxes levied by it in the year nineteen hundred and four; nor in the year nineteen hundred and six assess or levy taxes which shall exceed by more than seven per cent the aggregate amount of taxes levied by it in the year nineteen hundred and four; nor in the year 1907 assess or levy taxes which shall exceed by more than nine per cent the aggregate amount of taxes levied by it in the year nineteen hundred and four. The word "taxes" shall be construed to include district road taxes, as well

as all other taxes for county purposes. If the county court of any county shall be of opinion that the maximum fixed by this proviso is insufficient for any of said years, it shall make up an itemized estimate of the expenses to be provided for in such year, with the rate of levy in cents on each one hundred dollars of valuation necessary to provide for the payment thereof, and may submit the question of an increased levy to the voters of the county at an election to be held therein, on not less than thirty days published notice, and may make such rules and regulations as may be necessary for the holding of such election; and if three-fifths of the votes cast on the question of increased levy at such election be in favor of such levy, the county court may levy the amount stated in the notice of election as necessary; but this proviso shall not extend to the counties of McDowell and Gilmer, but in such counties, for said years, the county court may levy taxes under the limitations contained in section 7 of article X of the constitution of this state: provided, second, that after the year nineteen hundred and seven no county court shall in any year assess or levy taxes for any and all purposes, including district road taxes, the aggregate of which shall exceed sixty cents on the hundred dollars valuation of property except for the support of free schools and the payment of indebtedness as provided in section 7 of article X of the constitution unless such levy shall have been submitted to a vote of the people of the county and have received three-fifths of the votes cast for and against the same."

At the time of the meeting of said County Court, July 18th, 1906, for the purpose of laying the County levy, the County Court of Braxton County was indebted as follows:

There were outstanding bonds of the County Court of Braxton County issued in 1889 in aid of the Western and Elk River Railroad Company. The original issue of said bonds was $60,000.00, bearing six per cent interest. Of these bonds $40,000.00 was refunded in 1901, under an act of the Legislature, into new bonds bearing four per cent interest; and in July, 1906, there was unpaid of the old six per cent bonds, $10,000.00, and the whole of the new bonds amounting to $4000. At the time said bonds were issued the following provisions of the constitution of West Virginia were in force and they are still in force, namely, section 24 of article VIII:

"The county courts, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees,

curators, and the settlement of their accounts, and in all matters relating to apprentices. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies Provided, That no license for the sale of intoxicating liquors in any incorporated city, town or village, shall be granted without the consent of the municipal authorities thereof, first had and obtained."

And sections 5, 6, 7, 8 and 9 of article *X*:

5. "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

6. The credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation, except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it.

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years; Provided, That no debt shall be contracted under this section, unless

all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

9. The Legislature, may, by law, authorize the corporate authirities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same."

And there was also in force at that time and still remains in force section 59 of chapter 54 of the Code of West Virginia relating to the payment of subscriptions by Counties in aid of railroads, as follows:

"At the time of the annual levy of any such county, city, town or village is laid there shall be a tax levied on all the property *subject to taxation therein*, sufficient to pay the amount of such subscription, if payable in cash, or to pay the annual interest on the bonds of the county, city, town or village, if bonds be issued and to create a sinking fund to pay the principal when it shall become due; and in the case of such subscription being made by a district of any county, the county court of such county shall levy such tax on the property subject to taxation in such district. Such taxes shall be collected and accounted for in the same manner as other taxes and levies."

In addition to the railroad bonds above mentioned there were outstanding county orders upon the county treasury amounting to $9421.-00; also $7770.00 of what are known as the Tulley Bridge bonds with interest on the same amounting to $2690.00, and a balance due on account of building a county jail amounting to $15000. All of this indebtedness was legal and binding upon the County Court, as representing the County of Braxton, and due and payable during the then current fiscal year.

Prior to the said Acts of 1905 there was no restriction upon the power of the County Court to levy County taxes except that contained in said section 7 article 10 of the constitution, which restricted the County Court to a levy not exceeding ninety-five cents per one hundred dollars valuation, except for the support of free schools, the payment of indebtedness existing at the time of the adoption of the constitution and for the payment of any indebtedness with the interest thereon created after submission to a vote of the people as provided in section 8 of said Article 10. It will be seen therefore that prior to the Act of 1905 there was no restriction upon the power of the County Court to levy taxes for the payment of the said railroad

bonds and the interest thereon; said indebtedness having been created after submitting the matter to a vote of the people. And as to the other indebtedness of the County above mentioned, there was no restriction except that the levy should not exceed ninety-five cents on the hundred dollars. The said Act of 1905, which amended section 29 of chapter 39 of the Code, provided that for the year 1905 no County Court should assess or levy taxes, including district road taxes, which should exceed by more than five per cent the aggregate amount of taxes levied by it in the year 1904; nor in the year 1906 should such County Court assess or levy taxes which should exceed by more than seven per cent the aggregate amount of taxes levied by it in the year 1904.

The total assessment of real estate and personal property in the County of Braxton in the year 1904 was $2,799,604.00; and for that year the County Court levied upon said taxable property ninety-five cents on each hundred dollars, which levy produced the sum of $26,596.23 subject to delinquencies and exonerations. Between the years 1904 and 1906 there had been a change in the laws relating to the assessment of property and under the operation of these changed laws the real and personal property of Braxton County for the year 1906, assessed for taxes, amounted to $10,195,301.00. According to the provisions of the amendment to section 29 of chapter 39 of the Code, passed in 1905, the County Court was restricted in its levy to raising only seven per cent more for 1906 than it had raised in 1904. It had raised in 1904 $26596.23; add to that seven per cent, $1861.73, and it makes the sum of $28457.96 as the aggregate of the total taxes which the County Court was authorized to levy according to the provisions of said amendment of 1905.

When the County Court met on the 18th day of July, 1906, it made an estimate of the amount necessary to be raised by taxes to meet the current expenses of the County and such of its debts and obligations as were payable during said year; said estimate is found on page 20 of the record and is as follows:

> "Estimated amounts necessary to be levied for the current fiscal year, 1906, of all County debts, including the probable expenditures for County purposes, the amount of outstanding unpaid orders on the county Treasurer, allowances for delinquent taxes, discount and expense of Collecting etc. namely:
> Present indebtedness on County fund, outstanding
>
> drafts $9,421.00

Present indebtedness on bridge fund outstanding drafts	7,770.00
Necessary to be paid during the year on Jail contract	15,000.00
Necessary to be paid during the year on Franmetown Bridge	6,000.00
Salaries of Officers Witnesses Jurors Allowances for the poor & other expenses	12,600.00
Present indebtedness of Interest on R. R. bonds	825.00
Necessary to be paid during the year on account of interest on R. R. bonds	2,300.00
Commission, Delinquent List & Exonerations	3,300.00
	$57,146.00

In point of fact this estimate was very much below what it was necessary for the County Court to raise for 1906 to pay its current expenses and meet its obligations, then over due. This appears from a corrected estimate filed with the answer in this case, found on page 33 of the Record and is as follows:

Exhibit "D".

Corrected Estimate.

Current expenses, salaries &c		$15054.17
Commissioners, delinquent list and exonerations		3300.00
Roads		7719.00
		26073.17
Interest on R. R. bonds, current year	$2230.00	
Overdue interest	825.00	
Sinking fund for R. R. bonds	5000.00	
6% R. R. bonds overdue	10,000	18055.00
Outstanding Tulley orders	7770.00	
Interest on same about	2690.00	
		10460.00
Balance due on jail contract	15000.00	15000.00
Outstanding County orders	9421.00	9421.00
		79009 17"

According to the estimate made on July 18, 1906, the sum required to be raised was $57146.00. According to the corrected estimate filed with the answer, the sum required to be raised was $79009.17. In the first estimate the amount for Officers' salaries and other expenses was put at $12600.00; in the last at $15054.17 based upon the actual experience for 1905. The Court therefore found that the

amount that it was authorized to raise by the amended Act of 1905, namely, $28457.96, would fall far short of the amount necessary to meet the current expenses of the County and such of its debts and obligations as it was obliged to pay during said year. By the first estimate the shortage would be $28688.04. By the last estimate it would be $50551.21 The County Court therefore disregarded the said restriction in the Act of 1905 and on the 16th day of July, 1906, made a levy as follows:

For County purposes, fifty cents on the hundred dollars; for sinking fund for bonded indebtedness, five cents on the hundred dollars; for interest on the bonded debt, five cents on the hundred dollars; for keeping up the roads in each magisterial district, five cents on the hundred dollars, making a total of sixty-five cents on the hundred dollars, which would produce, upon the total estimated valuation of $10,195,301.00., taxes amounting to $65269.45, which was $36811.49 in excess of the maximum amount which the Court was authorized to levy by the said Act of 1905; but it was in fact less than the actual amount that would be needed to pay the current expenses of the County and meet its debts and obligations payable during said year.

This suit in mandamus was instituted by the State Tax Commissioner and three citizens of the County to compel the said County Court to reconvene and lay another levy conformable to the said Act of 1905, and which would not raise an amount that would exceed by more than seven per cent the aggregate amount of taxes levied by it in the year 1904, namely $28457.96. The answer and return of the County Court of Braxton County to said alternative writ sets up the foregoing facts showing that, by the estimate which it had made in accordance with the statute, a levy made under the Act of 1905 would be inadequate to pay the current expenses and the debts and obligations payable during the year as above set out; and that it had disregarded the Act of 1905 and had made the levy sufficient to meet the current expenses and debts, which debts had been incurred prior to the passage of said Act of 1905 at the time when there were no restrictions upon the power of the County Court to levy for their payment, except as above set forth. And said return pleads that therefore the said Act of 1905 is null and void, first, because it attempts to restrict the County Courts in their levy below ninety-five cents of the one hunded dollars, as allowed by the constitution of West Virginia; second, because said Act was special legislation, the

particulars of which are not necessary to be mentioned here; and third, because the said Act violates section 10 of Article One of the constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts; it being claimed in said answer that the contracts of said County Court of Braxton County were impaired by said Act in as much as it prevented said County Court from levying taxes to pay said debts and obligations.

The Supreme Court of Appeals of West Virginia decided the case against said defendants, upon the first two grounds, and as to the last ground, it held that the County Court of Braxton County had not such interest in the contracts, the obligations of which it alleged were impaired by said Act, as to authorize it to set up the defense that the Act was unconstitutional; but whilst the Judge, who delivered the opinion, admits that the effect of the Act is probably to impair the obligation of said contracts, yet he declines to pass upon that question because he holds that the County Court of Braxton County cannot in this mandamus proceeding raise the question.

And it is now moved to dismiss this writ of error on the ground that the County Court of Braxton County, and its individual members, had no right to sue out this writ of error from the said judgment of the Court for lack of interest.

ARGUMENT

It has been repeatedly held by this Court, and is a well recognized principal of constitutional law, that "A Court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not effect, and who has no interest in defeating it. That is, a legal interest in defeating it. The objection of the unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance."

Clark vs, *Kansas City*, 176 U. S. 114.

Lampasas vs. *Bell*, 180 U. S. 276.

Wellington, Petitioner, 16 Pick. 87, 96; 26 Am. Dec. 631, 635.

Smith, Auditor of Marion county, vs. *Indiana*, 191 U. S. 138.

But so far as we can see, these authorities do not govern the present case.

We submit that the County Court of Braxton County has the right to raise the question whether it was bound to obey the Act of 1905 in this case:

1. *Because the County Court is interested in this matter as a party to the contracts, the obligations of which are impaired by this statute.*

The County Court is a corporation. The following are the provisions of the statutes of West Virginia bearing upon this question:

Code, Chapter 39, Sect. 1.

"The County Court of every County shall be a corporation by the name of "The County Court of ———— County," by which name it may sue and be sued, plead and impleaded, and contract and be contracted with."

Code, Chapter 39, Section 4.

"The real and personal estate, rights, interests and privileges in relation to the real or personal estate, claims and rights of action heretofore belonging to any county, or held in trust for, or for the use of such county or its inhabitants, are hereby transformed to and vested in the county court thereof as such corporation. All contracts heretofore made with any county, or liabilities incurred by such county, shall be good against the county court thereof as such corporation, so far as they are good against the county, when this chapter as amended takes effect."

Chapter 39, Sects. 16 and 17.

"No words in any devise or conveyance of real estate to a county, or the county court thereof, or in any contract for the conveyance of real estate to a county or the county court thereof, expressing the purpose for which such real estate is devised, conveyed or sold, or is to be used, shall limit or impair the power of said county court to dispose thereof absolutely or use the same for another purpose, unless it be expressly declared in such instrument that whenever the said real estate shall cease to be used for the purpose, or in the manner therein specified, it shall revert to the former owner, his heirs or assigns.

17. Every devise or conveyance of, or contract to convey land within the limits of a county, heretofore or hereafter made, in any manner to or in trust for, or for the use or benefit of such county, its people or inhabitants, shall have the same effect as if made to the county court of such county."

Code, Chapter 39, Section 41.

"No suits shall be brought against a county Court for any demand for a specified sum of money founded on contract, except an order on the county treasury, until such demand has been presented to such court and been disallowed by them in whole or in part. But if the court neglect or refuse to act on such demand by the

close of the first session after that at which it is so presented, or of the second session after it is filed with the clerk pursuant to the preceding section, for presentation, it shall be deemed to have been duly presented and disallowed."

Code, Chapter 39, Section 43.

"The lands, buildings, furniture and books belonging to a county and used for county purposes, shall not be subject to execution or other process, but when any demand against the said county has been disallowed, in whole or in part, or any order on the county treasury, or judgment or decree for a sum of money against the said county court, has been presented to the sheriff without obtaining payment; or the sheriff has evaded or hindered such presentation, it shall be lawful for the person entitled to the money due on such demand, order, judgment, or decree, to petition any court having jurisdiction, or a judge thereof in vacation, for a writ of mandamus, to be directed to the county court of said county, commanding it to provide for the payment of such money, by and out of the next county levy to be made in their county, or show sufficient cause why they should not be compelled to do so; which writ shall be returnable as the court or judge awarding the same may order. Upon the said writ such proceedings shall be had as are prescribed by law in other like cases, and the court (but not the judge in vacation) may, if the case justify it, award a peremptory mandamus, directed to such court to provide in the next county levy to be thereafter made, for what shall appear to be due to the said complainant, with interest and cost. To any judgment or order of a circuit court under this section a writ of error or supersedeas, may be granted on like principles and rules as in other cases."

From the foregoing statutes it will be seen that the County Court is a party to all contracts, debts and obligations of its County. It stands for the County. When bonds are issued they are made in its name and issued by it. This was the case with the railroad bonds above mentioned. By these bonds the County Court expressly agreed to pay certain sums of money at certain times and in a certain way, and it certainly has a deep interest in seeing that it is not deprived of the power to carry out its agreement. We can see no difference between this corporation, the County Court of Braxton County, and any municipal corporation, or in fact any other corporation of any kind. If this were a proceeding against a municipal corporation to prohibit it from paying its debts, can it be possible that it would be said that it would have no interest in that question? A corporation like the County Court is an entity, a personality created for conveni-

ence, just as any other corporation, and it seems to us that it is governed by the same legal principles.

2. That the County Court is interested in this question is further shown by the following considerations: The people of Braxton County, the tax payers, if you please, are certainly, in one sense of the word, parties to the contracts of the County. It is they who pay the county's debts and discharge its obligations. They have the right to pay these debts, and are deeply interested in everything that affects the county's debts and obligations; certainly they are interested in anything that will interfere in any way with their right or power to pay these debts and discharge these obligations. If after they have contracted a debt in their aggregate capacity as a county, a law is passed that impairs its obligations, surely they have as much right as the creditor to object to it and to test its validity in the courts. Suppose this Act of 1905 had absolutely prohibited the County Court of Braxton County from paying the railroad bonds above mentioned, the County Court being amply able, and the people of the County being willing to do so. Could not the people of the County of Braxton go into Court and have such a law declared void? A law that takes away from these people the power to raise money to pay their debts is the same in effect and in legal contemplation as one which expressly forbids the payment of the debt.

Now the County Court is the representative of the people in all these matters. Local county government was in existence even before the State of Virginia was created, in the colonial days, having been brought over from the mother country. And the counties of Virginia and West Virginia have existed antecedent to and independent of the statutes which have been adopted by these States from time to time. The present constitution of West Virginia was adopted in 1872. That constitution recognizes and is founded upon the idea of the existence of certain counties constituting the state, Section One of Article Two of the constitution is as follows:

> "The territory of the following counties, formerly parts of the Commonwealth of Virginia, shall constitute and form the State of West Virginia, viz:
>
> The Counties of Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Ma-

son, McDowell, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming. The State of West Virginia includes the bed, bank and shores of the Ohio River and so much of the Big Sandy River as was formerly included in the Commonwealth of Virginia; and all territorial rights and property in, and jurisdiction over the same, heretofore reserved by, and vested in, the Commonwealth of Virginia, are vested in and shall hereafter be exercised by, the State of West Virginia. And such parts of the said beds, banks and shores as lie opposite, and adjoining the several counties of this State, shall form parts of said several counties respectively."

This section of the constitution so far from recognizing the counties as merely agencies of the legislature, states that their territory constitutes and forms the State of West Virginia. The existence of the counties is recognized in the constitution in sections 5 and 9 of Article 6 relating to the apportionment of the state for members of the Senate and of the House of Delegates. And Article 9 of the constitution of West Virginia is devoted entirely to county organization; so that the existence and permanency of the counties are just as fully recognized and protected by the constitution of West Virginia as the existing and permanency of the Legislature itself. In our opinion the Legislature has no power to abolish county government. It has no power to pass a statute which will have that effect. It has no power to prohibit the County Courts from levying sufficient taxes to carry on the county government. Such a power would enable it to destroy the counties if it saw fit, and thereby do away with that form of local self government which has been the heritage of Virginians from the earliest colonial days. There is such a thing therefore in West Virginia as a county. It is the constitutional expression for the people of a certain district of the State, representing their interest and rights collectively. Now the County Court is the representative of the people of the county in all these matters. It has been created to stand instead of the people. The people of the county collectively contract by means of and in the name of the County Court. It makes contracts for and on behalf of the people. These railroad bonds were made by the County Court, but in effect, they are the bonds of the people of the county taken collectively. The people, through and by means of the County Court, have promised to pay them. If they are paid they will be paid by the people of Braxton County. It is

impossible to sue all the tax payers and compel them to pay these bonds in case of default, and so for convenience, this artificial body called the County Court has been created to represent and stand for the tax payers. And any one having a cause against the tax payers of the county collectively, brings his suit against the County Court as standing for the tax payers and people; and the people defend the suit in the name of the County Court.

It will hardly be denied that if there were no such artificial representative of the people as the County Court, and if a mandamus were to issue against all the taxpayers to enforce a statute which prohibited them from paying a just debt, they would have such a personal interest in the matter as would enable them to test the question of the validity and constitutionality of the law. It is just as much a right and privilege of the debtor to pay his debt as it is of the creditor to collect it. A law which prevents a man from being honest and just is more to be condemned than one which prevents him from collecting what is due him. Suppose the Legislature should pass an Act, the effect of which would be to prohibit an individual citizen from paying a just and lawful debt which he owes, would he not have such a personal interest in the matter that he could raise the question of the constitutionality of the law, either by a suit brought by himself or by setting it up by way of defense to any suit brought against him in which such a question could arise?

How can the people of Braxton County in their collective capacity in which they made these contracts, test the validity of these statutes? They must do it, if at all, in the name and by means of the County Court, their representative. They cannot be sued or defend an action.☆It is possible that one or a few could bring such a suit, but why put this burden on one or a few, which ought to be borne by all.

This very doctrine of the representation of the people by an artificial body which has the right on their behalf to raise the question of the constitutionality of a statute, is recognized and acted upon in the case of Board of Liquidation vs. Louisiana, 179 U. S. 622. The Board of Liquidation in that case was made a corporation by the Legislature and given certain powers and authority to execute a law for the refunding of the debts of the City of New Orleans. The bonds of the City were delivered to it and it was authorized to countersign and issue as many of the bonds as might be required for the refunding or retiring operations. And it was authorized to receive

☆CLARK V. COUNTY COURT,
55 W. VA. 278, S.E. R. 285 ET SEQ.

the proceeds of a tax which the City was required to levy and to apply that tax to these bonds and in certain other ways mentioned in the Act. This Board of Liquidation was evidently not such a representative body, speaking generally, as the County Court under our West Virginia system. It was a mere temporary instrumentality provided for refunding and adjusting certain debts already created. It had nothing to do with the creation of the debts. It was not in any sense a party to them and had no power to levy taxes for their payment. It merely handled the bonds and received certain taxes for their payment with specific directions for the disposal of the surplus. *Yet in that case this Court following the State Court, held that said Board of Liquidation had such an interest in its representative capacity as authorized it to raise the question of the constitutionality of the statute involved in that case.*

This Court followed the State Court there, and it is argued from that that it will do so here. There the State Court held that the Board of Liquidation had the right to raise the question. Here it decides that the County Court has not that right, and the State Court refused to decide the constitutional question on that ground. This seems to us a very different matter from the other. Here a State Court deprives a party of the right to be heard as to its constitutional rights and thereby attempts to prevent it from coming into this Court. *It seems to us that this strikes at the very root of the jurisdiction and power and prerogatives of this the Supreme Court of the United States.* This Court must decide for itself whether a party has such an interest in the question or subject matter of a suit as will enable him to invoke the aid of this Court. It will look at all the facts, all the constitutional provisions and statutes, and at the relations of the parties to these things, and determine for itself whether the party invoking its aid has the right to do so. It cannot afford to follow an erroneous decision of a State Court even in the construction of State statutes if such a decision deprives the citizen of the right to come into this Court. It is admitted here that a grave federal question is involved. It is virtually admitted that a law has been passed by the Legislature of West Virginia which violates the Constitution of the United States, because it impairs the obligation of certain contracts. One of the parties to said contracts comes to this Court and asks it to pass upon the question of the validity of said Act and it is gravely argued that this Court will not do so because the State Court

has decided that such party has no right to raise such a question or to invoke the aid of this Court. The Court, in a doubtful case, may follow the State Court where it decides that the party has such an interest as will enable it to raise a federal question, but it will not follow an erroneous decision of the State Court which holds that a party has not such a right, and this doctrine is recognized by Mr. Justice White in the opinion delivered by him in said case of Board of Liquidation *vs.* Louisiana 179 U. S. 622. He says:

"The argument that no federal question is presented because the Court below awarded to the contract creditors all the rights to which they were entitled, involves the assumption that jurisdiction to review the decision of a State Court disposing of a federal question, depends upon the conception of the State Court or some of the parties to the record as to the correctness of the decision rendered. This fact denies the power to review a decision disposing of a federal question, in every case where the said Court assumes that such question has been by it correctly disposed of."

In Payne v. Staunton, 55 W. Va. 202; 46 S. E. 927, the Supreme Court of Appeals of West Virginia reaches the conclusion that a *ministerial officer* can refuse to perform an act required by an unconstitutional statute, before it has been judicially declared invalid.

See also, *Van Horn* v. *State*, 46. Neb. 62; 64 N. W. 365.

We submit that in this case this Court must exercise its independent judgment upon this question. It may be bound by the decision of the State Court so far as it contrues the State constitution and statutes relating to the powers of the County Courts and the control of the Legislature over said Courts. In so far as the State Court has decided that the Legislature has the power to restrict the County Courts in the amount of taxes they can levy, this Court will probably follow it and *this is really the only question decided by the State Court in this case.* It declined to decide whether that statute impaired the obligation of the contracts of Braxton County. It based this latter decision upon the ground that the County Court was a mere agency of the Legislature not interested in the question and therefore not competent to raise it. But this is a question that it seems to us must be passed upon by this Court, and that in order to do so it will ascertain for itself what the powers, duties and privileges of the County Court are under the constitution and laws of the State of West Virginia as they now exist. And even if this

Court should feel it is obliged to follow the State Court in so far as that Court has passed upon these powers, duties and privileges of the County Court, yet this Court will not follow that Court if it has drawn an improper conclusion from these powers, duties and privileges. If it has drawn an erroneous conclusion that the County Court has no right to raise the Federal question this Court will not follow it to that extent. We respectively submit that this is the true distinction which should be drawn by this Court.

3. The County Court of Braxton County has the right to raise this question as to whether it is bound by the terms of the Act of 1905, restricting its power in laying the County levy, because it has a duty to perform in relation to that matter. The constitution gives it authority "to lay and disburse the county levies." It has a duty to perform in regard to providing the money for paying the current expenses of the county and also to pay its accruing obligations. In the performance of this duty it was obliged to decide by what law it was to be governed; whether by the laws which were in force when the contracts were made, and which enter into and constitute the obligation of said contracts, or by the subsequent statute, the Act of 1905. *This Court has said in a number of cases that the laws which are in force at the time a contract is made continue in force so far as the contract is concerned, until it is fulfilled.*

The obligation of a contract consists in its binding force on the party who made it. This depends on the laws in force when it is made. These laws are necessarily referred to in all contracts as forming part of them as the measure of the obligation to perform them and as creating the right acquired by the other parties to compel performance. *The obligation does not inhere and subsist in the contract proprio vigore, but in the law applicable to the contract.*

Ogden vs. *Saunders*, 12 Wheat. 213, 302.

McCracken vs. *Hayward*, 2 How. 608.

Goodale vs. *Fennell*, 27 Ohio State 426; 22 Am. Rep. 221.

U. S. vs. *Judges* 32 Fed. 715

State vs. *New Orleans*, 37 La. Ann. 17.

~~expenses and meet its obligations, then over due. This appears from~~

Von Huffman vs. *City of Quincy*, 4th Wall 535. See page 549.

U. S. vs. *Mayor and Administrators of the City of New Orleans*, 103 U. S. 358.

Butz vs. *City of Muscatine* 8th Wall. 575.

White vs. *Hart*, 13 Wall, 647.
Walker vs. *Whitehead*, 16 Wall, 318.
City of Galena vs. *Amy*, 5th Wall. 709.
Riggs vs. *Johnson Co.*, 6th Wall.194.
105 U. S. 301.
Mobile vs. *Watson*, 116 U. S. 305.
Curran vs. *State of Arkansas*, 15 Howard 304.
Planters Bank vs. *Shark*, 6th How. 301.
Green vs. *Biddle*, 8th Wheat. 1.

The constitutional provisions and the laws which were in force in West Virginia when the railroad bonds of Braxton County were issued, not only authorized, but required the County Court to provide for the collection of a direct annual tax sufficient to pay annually the interest on said bonds, and the principal thereof within and not exceeding thirty four years. Constitution of West Virginia, Article 10, Sect. 8. The law governing the County Court in such a case is Section 59 of Chapter 54 of the Code, which provides as follows:

> 59. "At the time of the annual levy of any such county, city, town or village is laid, there shall be a tax levied on all the property subject to taxation therein, sufficient to pay the amount of such subscription, if payable in cash, or to pay the annual interest on the bonds of the county, city, town or village if bonds be issued, and to create a sinking fund to pay the principal when it shall become due; and in case of such subscription being made by a district of any county, the county court of such county shall levy such tax on the property subject to taxation in such district. Such taxes shall be collected and accounted for in the same manner as other taxes and levies."

This statute has never been repealed. It was in force when these railroad aid bonds were issued, and according to repeated decisions of this Court, it was still in force on July 18, 1906, when the County Court met to lay the levy for that year. These decisions above referred to hold that the laws for the collection of the requisite taxes, existing when the bonds were issued and subsequently repealed, still subsist for the purposes of the contract. If an act was in force when bonds were issued providing for the collection of the necessary taxes, it is beyond the power of the Legislature to repeal it so far as it concerns the bonds in question, unless some other adequate remedy were substituted in its place.

Under the constitutional provisions and statutes of West Virginia at the time the railroad bonds were issued, a direct tax was actually laid to pay the interest annually and provide the sinking fund to pay the principal. The County Court of Braxton County had made this provision as required by the constitution, so in 1906 the duty of the County Court was merely perfunctory in this respect. If these decisions, above quoted, of this honorable Court, are the supreme law of the land, then the statutes which authorized and required the taxes to be levied to meet these county debts were still in force. What was the County Court to do? What was its duty? Which law governed it? The statutes and the constitutional provisions above mentioned, which under the decisions of this Court still subsist for the payment of these debts, or the Act of 1905? Did the latter Act apply to the levies for the payment of the interest and sinking fund for these railroad aid bonds and the other outstanding debts of the county? These questions had to be solved by the County Court when it met July 18, 1906. The County Court decided that the Act of 1905 did not govern it; that the laws which were in force when these debts were created applied to this levy of 1906 so far as the providing for these debts was concerned. It decided these questions correctly. It performed its manifest duty under the law. It did what any court having jurisdiction would have compelled it to do upon the application of any party interested, either the bond holders or other creditors, of the people of the county, or any of them. Having performed this duty, when an effort is now made to compel it to undo what it has done and to obey a law which is not in force so far as these matters are concerned, cannot it, by way of defense, plead that it has already performed its duty in this respect? Has it not such an interest in the proceeding that it can ask the court to decide whether it has or has not performed its duty? The writ of mandamus is to a large extent a discretionary writ.

It appears to be well settled by the decisions of this Court that in cases of this kind where the amount of tax that can be levied under the statute will not be sufficient to pay the current expenses and the debts, said taxes will be first applied to the current expenses in order that the government may not be interrupted or interfered with, and if there is not sufficient after paying the current expenses to meet the debts of the county, the effect of the statute is to impair the obligation of these debts or contracts.

Von Huffman vs. *City of Quincy*, 4th Wall.535. See page 549.
U. S. vs. *Mayor and Administrators of the City of New Orleans*, 103 U. S. 358.
Clay Co. vs. *the U. S.*, 115 U. S. 616.

NO NECESSITY FOR THE VOTE OF THE PEOPLE.

If we are correct in our position that so far as the existing debts of the county were concerned the levy for 1906 was governed by the laws which were in force when they were created, rather than by the act of 1905, and that it was the duty of the County Court to levy enough taxes to pay the current expenses and provide for such of said debts and the interest thereon as were payable during the fiscal year; then there was no reason for submitting to a vote of the people whether there should be an additional levy beyond that prescribed by the Act of 1905. Such a vote could have no possible effect. If the vote were favorable to the levying of additional taxes the Court would have done just what it was bound to do without such a vote; and if the vote were unfavorable, the Court would have been obliged to disregard it and make the additional levy. The duty to make the additional levy existed independent of the Act of 1905, and no vote under that Act could change it.

Respectfully submitted.

Geo. E. Price,

GEO. E. PRICE,
Attorney for Plaintiffs in Error.

Office Supreme Court, U. S.
FILED
NOV 23 1906
JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1906.

No. 124.

THE COUNTY COURT OF BRAXTON COUNTY, AND OTHERS,
Plaintiffs in Error,

v.

THE STATE OF WEST VIRGINIA, EX REL. C. W. DILLON, STATE TAX COMMISSIONER, AND OTHERS,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

MOTION ON BEHALF OF THE STATE OF WEST VIRGINIA, DEFENDANT IN ERROR, TO DISMISS THE WRIT OF ERROR AND SUPERSEDEAS AND TO AFFIRM THE JUDGMENT, AND BRIEF OF COUNSEL FOR THE DEFENDANT IN ERROR IN SUPPORT OF SAID MOTION.

No. 437.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

STATE OF WEST VIRGINIA, *EX RELATIONE* C. W. DILLON, STATE TAX COMMISSIONER, DEFENDANT IN ERROR.

v.) 437.

THE COUNTY COURT OF BRAXTON COUNTY, AND OTHERS, PLAINTIFFS IN ERROR.

ON WRIT OF ERROR FROM THE SUPREME CORT OF APPEALS OF THE STATE OF WEST VIRGINIA.

Comes now the defendant in error and moves the Court to dismiss the writ of error in this case for want of jurisdiction: FIRST, because no Federal question was presented or decided either directly or necessarily by the Supreme Court of Appeals of West Virginia in the decision of this case or the opinion rendered thereon; SECOND, because the plaintiff in error, the County Court of Braxton County, was without power or authority to raise and present for decision in this case the question whether the act of the Legislature of 1905 impaired the obligation of contracts of creditors of said County, and because the power of said County Court of Braxton County so to present the constitutional question of the alleged impairment of the obligation of contracts of creditors of said County is a matter of local or State law, and is expressly decided in this case not to be vested in county courts under the statute law of West Virginia; THIRD, because said opinion and decision in this case by said Supreme Court of Appeals of West Virginia is based and rests upon grounds and reason sufficient to sustain the same entirely independent of the consideration of any Federal question whatever; FOURTH, if the said writ of error shall not be dismissed that the judgment or decree of the said Supreme Court of Appeals of West Virginia should be affirmed, because it is manifest that the said writ of error was taken for delay only, and that the question on which the jurisdiction depends was so frivolous as not to need further argument.

437.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

THE COUNTY COURT OF BRAXTON COUNTY, AND OTHERS, PLAINTIFFS IN ERROR.

v.

THE STATE OF WEST VIRGINIA, *EX REL.* C. W. DILLON, STATE TAX COMMISSIONER, AND OTHERS, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

MOTION ON BEHALF OF THE STATE OF WEST VIRGINIA, DEFENDANT IN ERROR, TO DISMISS THE WRIT OF ERROR AND SUPERSEDEAS AND TO AFFIRM THE JUDGMENT, AND BRIEF OF COUNSEL FOR THE DEFENDANT IN ERROR IN SUPPORT OF SAID MOTION.

STATEMENT OF THE CASE.

The Legislature of the State of West Virginia at its extraordinary session of 1904 and its regular session of 1905 amended and re-enacted all of the statute law of said State theretofore in effect affecting taxation, and to a large extent remodeled or created the entire tax system of said State. The principal purpose and object of such legislation was to more effectually secure the assessment of the real and personal property within the State for purposes of taxation at its true and actual value, it being a matter of State history that both classes of such property had formerly been assessed for taxation at less than its true and actual value, and to accomplish this end the duties of the local or county assessors were enlarged, specifically defined, and made mandatory in their character, new tax officers with new duties and

powers were created, and a State Tax Commissioner, having general supervision of State taxation and with general powers of supervision over local officers, and, to some extent, over assessing boards, was created and appointed. It was the well known and clearly defined intent of the Legislature, as well as the obvious and inevitable result of such legislation properly enforced, that its result would be in the years immediately succeeding such statutory enactment an enormous increase in the assessed valuation for purposes of taxation of all property, both real and personal, within the State, and without exception in every county in the State. Such legislation changed the basis of valuation in every county from that of its "cash value" to that of its actual market or true and actual value, and, in addition, provided much more effective machinery for securing its assessment in accordance with its value than had ever before existed. As matter of fact, and as anticipated and expected by the Legislature, the result was that the assessed valuation of real and personal property in the various counties of the State was increased from one hundred per cent to six hundred per cent. for the year 1906 over the assessed values in the same counties for the year 1904. In view of such expectation and design that large increases of value for purposes of taxation would result, and for the express and obvious purpose of preventing excessive and burdensome taxation at the hands of county and local authorities by the imposition of levies entirely out of proportion, in the amounts which they would realize, with the amounts which tax payers had previously been called upon to pay, the Legislature as part of its amended and reenacted statutory system of taxation enacted chapter 48 of the acts of 1905 (Code of West Virginia, 1906, section 29, chapter 39), which reads in part as follows:

> "No county court shall in the year nineteen hundred and five assess or levy taxes, including district road taxes, which shall exceed by more than five per cent the aggregate amount of taxes levied by it in the year nineteen hundred and four; nor in the year nineteen hundred and six assess or levy taxes which shall exceed by more than seven per cent. the aggregate amount of taxes levied by it in the year nineteen hundrd and four; nor in the year nineteen hundred and seven assess or levy taxes which shall exceed by more than nine per cent. the aggregate amount of taxes levied by it in the year nineteen hundred and four. The word "taxes" shall be construed to include district road taxes, as well as all other taxes for county purposes. If the county court of any county shall be of opinion that the maximum fixed by this proviso is insufficient for any of said years, it shall make up an itemized estimate of the expenses to be provided for in such year,

with the rate of levy in cents on each one hundred dollars of valuation necessary to provide for the payment thereof, and may submit the question of an increased levy to the voters of the county at an election to be held therein on not less than thirty days published notice, and may make such rules and regulations as may be necessary for the holding of such election; and if three-fifths of the votes cast on the question of increased levy at such election be in favor of such levy, the county court may levy the amount stated in the notice of election as necessary; but this proviso shall not extend to the counties of McDowell and Gilmer, but in such counties, for said years, the county court may levy taxes under the limitations contained in section 7 of article X of the constitution of this state; provided, second, that after the year nineteen hundred and seven no county court shall in any year assess or levy taxes for any and all purposes, including district road taxes, the aggregate of which shall exceed sixty cents on the hundred dollars valuation of property except for the support of free schools and the payment of indebtedness as provided in section 7 of article X of the constitution, unless such levy shall have been submitted to a vote of the people of the county and have received three-fifths of the votes cast for and against the same."

In the year 1904 there was assessed and ascertained to be taxable property within the County of Braxton, in said State, real and personal, of the aggregate value of $2,799,604.00, and in said year the County Court of said County made and fixed a levy upon such taxable property for all county purposes of every kind whatsoever, aggregating ninety-five cents on each one hundred dollars of valuation of such property so taxable in said county for said year, to cover the estimated amount necessary to be raised for county purposes for such fiscal year. Such levy of ninety-five cents on each one hundred dollars was the maximum levy permitted to be laid by county courts under the provisions of the State constitution of 1872, sections 7 and 8, article X. We here insert such sections of the constitution in full, as follows:

"7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation, except for the support of free schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it."

"8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized

> their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years; Provided, That no debt shall be constracted under this section, unless all questions connected with the same, shall have been first submitted to a vot eof the people, and have received three-fifths of all the votes cast for and against the same."

Said levy so made for the year 1904 of ninety-five cents on each one hundred dollars valuation upon such assessed value of $2,799,604.00 raised and produced from such property in taxes, for such year, the sum of $26,596.23, subject only to such delinquencies and exonerations, if any, as may subsequently have been for said year returned or allowed by the County Court on property thought to have been excessively valued.

For the year 1906 the assessed value, for purposes of taxation, of the real and personal property in said county of Braxton was $10,195,-301.00, or approximately four times the assessed value for 1904, and the property in said County having been so assessed at said sum for the year 1906 it became under the express language of the Act of 1905, heretofore cited, the duty of the County Court of Braxton County to make up an estimate of the amount necessary to be raised for county purposes for the fiscal year and to make a levy thereupon on said property of so many cents on each one hundred dollars of valuation according to said assessment as would raise the estimated amount necessary for county purposes, subject to the mandatory provisions of said section and to the maximum amount it authorized thereby to raise, namely, an amount not to exceed the aggregate levied for county purposes for 1904, namely, $26,593.23, plus an additional amount of not to exceed seven per cent, or $1,861.73, making the aggregate of the total taxes which said County Court was lawfully authorized to levy for the year 1906 the sum of $28,457.96. In order to have raised the maximum amount which said County Court under statute was authorized to raise it would not have been necessary to have made a levy to exceed twenty-eight cents on each one hundred dollars of valuation of the property within said county.

The record shows both by the allegation of the petition for mandamus, as well as the return filed to the alternate writ, that said

County Court of Braxton County at its regular session for levying purposes in July, 1906, by the vote of two of its members or commissioners of said Court, constituting a majority, attempted to make and did enter a levy for county purposes for the year 1906 on the taxable property in said county so assessed as hereinbefore stated, of sixty-five cents on every one hundred dollars valuation thereof and caused such attempted levy to be entered upon the order book of said Court as the levy for county purposes for 1906. Such levy at sixty-five cents on each one hundred dollars valuation at the assessed value for 1906 would raise in taxes for county purposes the sum of $65,269.45. As under the statute already cited, the maximum amount which said County Court was authorized to raise by levy was $28,457.96; it is apparent that by such unauthorized levy there would actually be raised a sum exceeding such authorized maximum by $36,811.49. It is also apparent that if such restrictive statute is a valid law, that such attempted levy was, and is, wholly unauthorized, contrary to a mandatory statute, and therefore an absolute nullity.

Said attempted levy having been ordered by said County Court and the order having been entered of record, but said levy not having been actually made or extended upon the property books, the State of West Virginia, at the relation of C. W. Dillon, State Tax Commissioner of West Virginia, and Amos Bright and other relators as citizens, residents and tax payers of Braxton County, applied by petition to the Supreme Court of Appeals of West Virginia for an alternate writ of mandamus to compel the County Court of Braxton County and the commissioners composing said Court to meet and lay a levy for county purposes in accordance with the statute law, proceeding upon the theory that the levy attempted to be made, being plainly unauthorized by statute and contrary to the mandatory terms of the statute, was in law no levy, and that, therefore, the duty of making a levy had not been performed by said Court. An alternate writ in accordance with the prayer of said petition was awarded, and upon its return day the respondents by their counsel appeared and filed their return to the alternate writ, together with certain exhibits, to which return the relators filed a joint and separate exception, a demurrer, and a general and special replication. The return to said writ is found on page 13 of the record, and the exception, demurrer and special and general replication of the relators is found on page 233.

It will appear from the return of the respondents that by way of defense to such petition and in resistance of the issuing of the per-

emptory writ they relied upon the following matters: (1) That said restrictive act of 1905 violated section 7 of article X. of the State Constitution already cited; (2) That it also violated section 39 of article VI. of the Constitution of West Virginia, forbidding the Legislature to pass local or special laws regulating county or district affairs, upon the ground that two counties being excepted in terms from the operation of the act of 1905, said act was, as to such counties, local or special; (3) That said act was violative of section 10 of article I. of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts, upon the alleged ground that there were certain outstanding railroad bonds of Braxton County issued in the year 1889 and certain outstanding orders upon the County Treasurer, amounting to $9,421.00, and a certain indebtedness of the County of $7,770.00, with interest, on account of what is known as the bridge fund due to one Tully, and also a certain alleged indebtedness due for the construction of a county jail. The respondents allege that the effect of the act of 1905 was to take away from the County the power to levy taxes up to the maximum of ninety-five cents on each one hundred dollars valuation fixed by the constitution as the maximum, and to which extent it had the power to levy at the time the various indebtedness mentioned was contracted or incurred. The respondents also filed as exhibits with their return copies of a mandamus awarded against the County Court by the Circuit Court of Braxton County, commanding it to provide a suitable jail within the County, and also filed a record and opinion rendered by the Supreme Court of West Virginia in the case of *Taylor* v. *the County Court of Braxton County*, from which it appears that the Supreme Court of Appeals of said State refused to enjoin said County Court, at the instance of certain tax payers, from paying the Tully claim, or bridge claim hereinbefore mentioned. Such last named record, injected into this case as an exhibit by respondents, comprises by far the larger portion of the record now before this Court, beginning on page 31 and extending to and including page 181.

After a full hearing the Supreme Court of Appeals of West Virginia decided that said act of 1905 was not violative of any provision of the Constitution of West Virginia, and that the County Court of Braxton County had no such interest in any of the alleged outstanding debts or claims against the county as would enable it to plead that such claims, debts or contracts alleged to be due to third persons were

destroyed or impaired by such restrictive act, and, so holding, awarded the peremptory writ prayed for in relators petition.

Thereupon said County Court, by its counsel, orally moved said Supreme Court of Appeals to grant it a writ of error and supersedeas to the Supreme Court of the United Statees from the judgment aforesaid, claiming that it had the right to stand in judgment for the creditors of Braxton County and to present for decision on behalf of such creditors a Federal question, namely, whether or not the contract obligation of such creditors was destroyed or impaired by said act of 1905. The Supreme Court of Appeals having reached the conclusion and decided that no such right to stand in judgment for the creditors of the County was vested in the said County Court under the Constitution or statute law of West Virginia as enacted by the Legislature and construed by the highest Court of the State, and, therefore, having been unable and refused to attempt to pass upon the question whether or not contracts of third persons due from said County had actually been impaired, and having therefore expressly decided that no Fede al question was before it for decision declined to allow said writ of error. Thereupon the respondents by their counsel applied to one of the Justices of this Court in vacation and a writ of error, with supersedeas, was awarded. Being respectfully of the opinion that no Federal question was presented for decision or was decided by the Court below, and being further of the opinion that the County Court of Braxton County had no such interest in the judgment rendered by such Court as would authorize it to prosecute a writ of error to this Court, the defendant in error has given notice under and in accordance with the provisions of rule 6 of this Honorable Court of its intention to move the Court to dismiss the writ of error heretofore awarded or to affirm the judgment of the Supreme Court of Appeals of West Virginia, the service of which notice has been duly accepted by counsel of record for the plaintiffs in error, returned to and filed in the Clerk's Office of this Court and is returnable December 10th, 1906.

THE COUNTY COURT OF BRAXTON COUNTY UNDER THE CONSTITUTION AND STATUTE LAW OF THE STATE OF WEST VIRGINIA, AS CONSTRUED BY THE HIGHEST COURT OF THAT STATE, IS A MERE FISCAL OR ADMINISTRATIVE BOARD FOR THE MANAGEMENT OF COUNTY AFFAIRS AND HAS NO PERSONAL OR DIRECT INTEREST IN CLAIMS AGAINST THE COUNTY OWNED OR HELD BY THIRD PERSONS, SUCH AS WILL AUTHORIZE IT TO PROSECUTE A

WRIT OF ERROR IN THIS CASE, NOR UNDER SUCH CONSTITUTION, STATUTES AND DECISIONS HAS IT THE RIGHT TO STAND IN JUDGMENT FOR SUCH THIRD PARTIES AND PRESENT FOR DECISION THE QUESTION WHETHER OR NOT ANY GIVEN STATUTE VIOLATES THEIR CONTRACTS RIGHTS AGAINST THE COUNTY.

It is not our intention on this motion to discuss or refer to the alleged grounds wherein the act of 1905 violates the Constitution of the State of West Virginia. These were purely questions to be decided by the State Court and its decision thereon is of course final. Eliminating these questions from the record or consideration in this Court, there remains but one, namely, had the County Court of Braxton County, which is a mere administrative fiscal board for county purposes, such direct personal and pecuniary interest in claims against the county as would authorize it to plead an alleged impairment of the obligation of such claims by statute of the State? If not, it is apparent that no Federal question was presented in the Court below for decision, and therefore no decision adverse to a claim that the act of 1905 impaired the obligation of a contract can have been made, because not before such Court. It is equally apparent that if such County Court has not such interest and therefore could not raise such question below that it has no such interest as will sustain a writ of error to this Court, and therefore the wirt of error allowed must be dismissed.

The County Courts in West Virginia are created and their powers defined by the Constitution of 1872, and the powers vested in them by the Constitution are effectuated by divers acts of the Legislature, but are not and cannot be materially broadened or changed thereby. Prior to the adoption of the Constitution of 1872 the County Courts were vested with certain judicial powers, but by such Constitution all such judicial powers are taken from them and the Legislature is forbidden to confer any powers or duties of a judicial nature upon them, and they are, as we have stated, made purely and simply fiscal or administrative boards for the conduct of county affairs. They deal and act for the county and for the tax payers of the County. They have no personal responsibility or liability for the county's obligations, but are merely created and constituted corporations for the purposes of conveniently administering the affairs of the respective counties and of creating and fixing some board which may be compelled to take appropriate action for the tax payers of the counties as constituting con-

sistent portions of the State government. Judgments against them are collected directly by taxes levied upon the property and tax payers of the county, and the county's obligations bind no property or no person, save and except the property of the tax payers of the county which may be compelled by levy in proper proceedings to pay taxes sufficient to meet them. Section 22 of article VIII, of the Constitution provides that the County Court shall consist of three commissioners and when it shall hold its regular sessions. Section 23 provides how such commissioners shall be elected, from what districts, their compensation, and that they shall annually elect one of their number as president. Section 24 defines their powers and duties, and we here insert the same verbatim:

"The county courts, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and in all matters relating to apprentices. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affiairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries, and mills, with authority to lay and disburse the county levies. *Provided,* That no license for the sale of intoxicating liquors in any incorporated city, town or village, shall be granted without the consent of the municipal authorities thereof, first had and obtained. They shall, in all cases of contest, judge of the election, qualification and returns of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such courts may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. And provision may be made, under such regulations as may be prescribed by law, for the probate of wills, and for the appointment and qualification of personal representatives, guardians, committees and curators during the recess of the regular sessions of the county court. Such tribunals as have been heretofore established by the Legislature under and by virtue of the thirty-fourth section of the eighth article of the constitution of one thousand eight hundred and seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act as to police and fiscal matters in lieu of the county court created by this article until otherwise provided by law. And, until otherwise provided by law, such clerk as is mentioned in

> the twenty-sixth section of this article, shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes under the said article and section of the constitution of one thousand eight hundred and seventy-two, or the clerk of such court or tribunal respectively, respecting the recording and preservation of deeds and other papers presented for record, matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators and the settlement of their accounts, and in all matters relating to apprentices."

The Legislature pursuant to said section of the Constitution, in chapter 5 of the acts of 1881, conferred the identical powers, so far as relates to the fiscal affairs of said counties, upon said County Courts as is conferred by the section cited from the Constitution without any change whatsoever in substance or language, and, indeed, simply enacted such section of the Constitution into statute law with a few minor changes in verbiage in the portions thereof not directly applicable to fiscal affairs, except the granting of liquor licenses.

The County Courts of West Virginia being therefore created of the Constitution of the State and with their powers conferred and defined by the Constitution and the statutes of that State and having no powers whatever except such as are expressly conferred or necessarily incident to those expressly conferred, the question of what such powers are and in what character the County Courts stand to the creditors of the counties in peculiarly one for interpretation by, and the decision of the State Court. Under the repeated decisions of this Court, the decision of the highest Court of the State as to the true intent and meaning of such constitutional and statutory provisions conferring and defining their powers is final and will be followed by this Court. Such decisions so interpretating such laws are as much a part and portion thereof as if embodied therein and adopted as part of the constitution or enacted as part of the statutes. This is true in the majority of cases of a State Court construing a State's statute, but it is particularly and peculiarily proper in the case of a State Court construing its own constitution or statutes creating a body exercising certain delegated portions of the State's sovereignty. In such cases we feel justified in asserting that it is not only proper, as an original proposition, that the decision of the State Court should be binding upon the Federal Court, but that it is essentially important that the State, through its law making body and through its judiciary, should enact and construe how far and to what extent sovereign powers inherent in the State have been by its own act divested and transferred to

an artificial body of its own making. It could and can be divested of such powers or compelled to delegate any portion whatsoever thereof by no power known to the law save its own volition, and having done so, its courts should alone be vested with the right to construe its statutes and determine to what extent it has so voluntarily divested itself and to what extent it has conferred powers upon a body or board of its own creation. We believe that this principle has been so repeatedly recognized by this Court as to render citation of authority unnecessary, and we therefore pass directly to the question as to what interpretation has been placed upon the constitutional and statutory provisions cited by the highest Court of West Virginia as to the power of the county courts to stand in judgment for, and raise defenses on behalf of creditors of the counties.

In the case now before this Court the Supreme Court of Appeals of West Virginia, after full consideration, have passed upon this exact question and have specifically and deliberately decided that under such State Constitution and such State statute no power exists in the County Courts to represent or stand in judgment for the creditors of the county, and that therefore such county courts cannot present, as a defense to a mandamus, that this particular act, of 1905, impairs or affects the obligation of creditors of the county. We have filed with our motion to dismiss or affirm a duly certified copy of the opinion rendered by the Supreme Court of Appeals of West Virginia in the case at Bar, together with the order filing such opinion. The opinion was not handed down at the time that the plaintiffs in error presented the record to one of the Justices of this Court for the writ of error, but was subsequently announced. In this connection we desire to call the Court's attention to the fact that the Constitution of West Virginia, section 5, article 8, provides:

> "When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point fairly arising upon the record of the case shall be considered and decided; and the reasons therefor shall be concisely stated in writing and preserved with the record of the case, and it shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the Judges thereof, which shall be prefixed to the published report of the case."

Under the decisions and rules of this Court, therefore, such opinion must be looked to and considered as a part of the record now before the Court.

Jacks v. *Helena*, 115 U. S. 288.

Kriger v. *Shelby R. R. Co.*, 125 U. S. 44.

The Court in the opinion referred to, after disposing of the questions as to alleged conflict between said act of 1905 and the State Constitution, takes up the question of the right of the County Court to present as a Federal question the alleged impairment of the contract rights of certain creditors, and expressly decides that under the Constitution and statute law of West Virginia the County Courts have no such power or right. The opinion by Judge Poffenbarger, which is concurred in by the entire Court, discusses this question as follows:

> "Being of the opinion, hereinbefore stated, that the county court holds its powers respecting the quantum of revenues to be raised each year by delegation from the Legislature, as an agency in its hands and under its control, and not by delegation from the people, effected by the constitution, and so deciding, it follows necessarily that the powers and rights so created are not contractual in their nature. No provision of the federal constitution places any restraint upon the powers of the Legislature to revoke them. Meriwether *v.* Garrett, 102 U. S. 472; United States *v.* Railroad Co., 17 Wall. 323; Commissioners *v.* Lucas, Treasurer, 93 U. S. 108. 'Institutions of this kind, whether called counties or towns, are auxiliaries of the state in the important business of municipal rule, and cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the Legislature of the state, because there is not and cannot be any reciprocity of the stipulation, and their objects and duties are utterly incompatible with everything of the nature of a compact.' Laramie County *v.* Albany County, 92 U. S. 307, 311."
>
> "In respect to the bonds, interest, sinking fund, outstanding county orders, current expenses and other obligations resting upon the county, the Legislature, by this statute, merely seeks to control the exercise of the discretionary powers of its own agent, concerning the amount of money it shall use in the payment of current expenses and indebtedness. It permits the raising and expenditure of as much and presumably more money than the court was ever allowed to exact from the people in any previous year, since the levy for 1904 rose to the constitutional limit of ninety-five cents. The creditors themselves thus have a more ample provision, under this limitation of power, for the satisfaction of their debts than was possible at the time the debts were contracted. If they have been content to wait until this time, and the Legislature, in limiting the powers of its fiscal agent, saw fit to assume that they would willingly continue to indulge their creditor, until such time as payment could be more conveniently made, we see no reason, and know of no principle, upon which it can be asserted that the agent, to whom nothing is due, may nevertheless precipitate upon itself and the public

the burden of the immediate discharge of heavy obligations to others, none of whom are here, or were before the county court, claiming or demanding it. The only contracts that can possibly be affected are those which impose obligations upon and against the county and in favor of persons who are not parties to this action, either in person or by representation. If the statute in question should prevent the enforcement of any of these obligations, it will confer an immediate pecuniary benefit upon the respondent, and inflict no possible detriment other than a taint upon the public honor, and that has been entrusted to the Legislature rather than to the county courts. If it merely delays payment, with the consent of the creditors, instead of repudiating the obligations, no detriment of any kind results, except the additional burden of interest, and whether, in view of the financial conditions prevailing at a given time, a wise public policy demands the procurement of forbearance by its payment, is also a matter within the supervisory power and control of the Legislature.

"By contitutional provision, the county courts are the levying and disbursing agents in local self government. The constitution commits to them the *superintendence* and *administration* of the internal police and fiscal affairs of their counties. But in the execution of all these powers, they must act under such regulations as are prescribed by law. Thus the means for discharging their obligations and making improvements are subject to Legislative control and may be limited or withheld, not to the material prejudice of a creditor, but certainly as against the county court. The Legislature of the State of Tennessee repealed the Charter of the City of Memphis, a corporation against which many thousands of dollars of indebtedness existed, and its powers to terminate the existence of the corporation, notwithstanding its debts, was upheld by the unanimous opinion of the Supreme Court of the United States, Meriwether *v.* Garrett, 102 U. S. 511. Its relation to the contracts of indebtedness, as obligor, did not bring it within the protection of any guaranty of the Federal constitution. The contracts were not destroyed or impaired by the repeal of the city charter. They survived and it remained for the state to make provision for them. It was not assumed in that case, nor can it be here, that the state intended to repudiate public obligations or unreasonably postpone performance. Mr. Justice Field said the Legislature had 'thus provided against future claims from the improvidence of wrecklessness of the new government,' and that 'The power of the state to make this change of local government it incontrovertible.'

"If, then, we are correct in this conclusion that the Legislature may control county courts in respect to the amounts of revenue they may raise, it is perfectly manifest that they must pay their debts with such funds as the Legislature allows them to provide for the purpose, and expend in public improvements only so much as they may be able to obtain for that purpose out of the amount they are allowed to collect; and, if the Legislature, by any restriction it may impose, should contravene the rights of

creditors in violation of a clause of the Federal constitution, the creditors alone may complain. This proposition harmonizes with the decision of the Federal Supreme Court in Board of Liquidation *v.* Louisiana, 179 U. S. 622, 45 Law Ed. 347."

It will appear from such opinion that if the question of the powers of the county court, or similar boards, under state statutes, to stand in judgment for creditors of the county is a question to be finally decided by the Courts of the State itself, that no more direct or conclusive case could arise for the application of such rules than the one at Bar. And the Court will notice that the Supreme Court of Appeals expressly declines to decide, for the question was not before it for decision, whether or not the act of 1905 does actually impair or may actually impair or affect the obligation of contracts of creditorse of the county, saying on page 14, "It may be that the statute is violative of the provision in the Federal constitution above referred to. When, if ever, that question is presented to the Supreme Court of Appeals by a person having a legal interest in its determination it will be decided upon the record."

If, therefore, we are correct as to the meaning of the decision of the Supreme Court of Appeals of West Virginia and the construction placed by it upon the Constitution and statutes defining the powers and duties of the county courts, which opinion seems to us so plain in its meaning as to neither require nor admit of argument, then we respectfully submit that no Federal question was presented for decision or decided by the Court below adverse to the rights of the county court of Braxton County, and therefore the writ of error should be dismissed.

In *Board of Liquidation* v. *Louisiana,* 179 U. S. 622; 45 Law Ed. 347, the question was raised whether or not two boards in the State of Louisiana had the capacity to plead that the provisions of the State Constitution of Louisiana impaired the obligation of contracts in violation of the constitution of the United States. In that case the want of capacity of both bodies to urge the defense in question were directly passed upon, and the Supreme Court of Louisiana held that, under the statute of the State of Louisiana, both occupied such a fiduciary relation as to empower them to assert that the enforcement of the provisions of the State Constitution would impair the obligations of the contract entered into by others with such boards. This court, after reciting this fact, said:

"Without implying that the reasoning by which this conclusion

> was deduced would command our approval were we considering the matter as one of original impression, and without pausing to note the ulterior consequences which may possibly arise from the ruling of the court below on the subject, we adopt and follow it as the construction put by the Supreme Court of the State of Louisiana on the statutes of that state in a matter of local and non-Federal concern."

Precisely the converse of this proposition is now presented to this Court. The Supreme Court of Appeals of West Virginia construing not only the statutes of that State, but its constitution, have held that the Commissioners of Braxton County, constituting its County Court, have not the power or interest to enable them to present the question of alleged impairment of obligations of creditors of the County. This is precisely the same "matter of local and non-Federal concern" which was decided to the contrary by the Supreme Court of Louisiana. We draw the inference, reasonably we believe, from the language of the Court in the case cited that, as an original proposition, it would adopt the decision and reasoning of the Supreme Court of West Virginia rather than that of the Supreme Court of Louisiana if the issue now arose before it as a local question, but, regardless of its action and decision as an open question under the decisions cited, the property of the decision is closed to this Court and it will simply follow the decision of the highest Court of West Virginia as a matter of local and non-Federal concern.

> EVEN IF THIS COURT SHOULD BE OF OPINION THAT IT IS NOT BOUND TO ACCEPT THE DECISION OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA AS TO THE POWERS OF THE COUNTY COURT TO STAND IN JUDGMENT FOR ITS CREDITOLS AND PRESENT FOR DECISION THE QUESTION OF ALLEGED IMPAIRMENT OF CREDITORS' CONTRACTS, YET UNDER THE DECISIONS OF THIS COURT THE COUNTY COURT OF BRAXTON COUNTY HAD NO SUCH INTEREST AS WOULD ENABLE IT TO PROSECUTE A WRIT OF ERROR TO THIS COURT.

It is well settled that the Supreme Court cannot review a State judgment unless the Federal question involved therein was *personal* to the plaintiff in error. The party must claim the federal right for himself and not for a third person. A writ of error cannot be sued out by persons not parties to the record in a matter arising after execution on the part of a stranger to the judgment and the

proceeding. A party insisting that a statute is unconstitutional must show that he may be injured by the unconstitutional law.

Taylor Jurisdiction & Procedure, U. S. Supreme Court 461.

It is essential that the interest of the plaintiff in error must be a personal and pecuniary interest, and a mere interest in the result or outcome of litigation, or the principle established by a decision, is not sufficient to sustain a writ of error to this Court.

Henderson v. *Tennessee*, 10 Howard 311.

Giles v. *Little*, 134 U. S. 635.

In both of the cases last cited the law was announced as follows:

> "In order to give this Court jurisdiction to review a judgment of a State Court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be one of the plaintiff in error and not of the third person only."

In *Lampasas* v. *Bell*, 180 U. S. 276, the City of Lampasas was sued on certain bonds formerly issued by it. Its defense was upon the ground that the then City, the defendant, was not, in legal effect, the same city which issued the bonds or its successor in liability thereon, and further in attempt to inject a Federal question into the record, the City alleged that since the issuance of the bonds certain territory and inhabitants were incorporated into the City without being given an opportunity to be heard "whether they should or should not be included in, or made subject to taxation in the proposed corporation," and that to hold the City as constituted at the time of the suit liable upon the bonds would be to subject such newly acquired territory and inhabitants to taxation without their having had any opportunity to be heard, and hence to take their property without due process of law. This Court, speaking through Justice McKenna, said:

> "But what concern is it of the plaintiff in error whether the residents of such territory were or were not given an opportunity to be heard? It had no proprietary right or interest in 'territory proposed to be incorporated;' *it* was put to no hazard of taxation without a hearing, nor can it stand in judgment for those who had such interest or were put to such hazard. * * * * * We said in *Clark* v. *Kansas City*, 176 U. S. 114; 44 Law Ed. 392, (quoting from Cooley Const. Lim. sec. 196) that 'a Court will not listen to any objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it. That is, a legal interest in de-

feating it. The objection of unconstitutionality of a statue must be made by one having the right to make it, not by a stranger to its grievance. 'To this extent only is it necessary to go in order to secure and protect the rights of all persons against the unwarranted exercise of Legislative power, and to this extent only, therefore, are courts of Justice called on to interpose. *Wellington, Petitioner*, 16 Pick. 87, 96, 26 Am. Dec. 631, 635.

"It follows necessarily that the plaintiff in error has no legal interest in the constitutional question which it raised, and upon which it claims the right to come directly to this Court from the Circuit Court under section 5 of the Acts of 1901." The writ of error was accordingly in that case dismissed.

In *Smith, Auditor of Marion County, Indiana* v. *Indiana*, 191 U. S. 138, 48 Law Ed. 125, the facts involved were as follows:

The State of Indiana in 1899 passed an act providing that any owner of real estate liable to taxation within said State who was indebted for any sum secured by mortgage upon his real estate might have the amount of such mortgaged indebtedness, not exceeding $700.00 deducted from the assessed valuation of the mortgaged premises for that year, and the amount of such valuation remaining after such deduction should have been made should form the basis for assessment for taxation of said real estate for said year. Smith, the Auditor of Marion County, being advised that this statute was unconstitutional and void, both by reason of conflict with the constitution of Indiana and under the Federal Constitution, declined to deduct a mortgage of $500.00 on real estate of the relator in that case and a mandamus proceeding was instituted against him to compel him to make such deduction. The lower court awarded a peremptory mandamus and collected costs personally against Smith. This judgment was subsequently affirmed by the Supreme Court of Indiana and a writ of error was sued out by Smith, Auditor, to this Court. Upon notice of motion to dismiss for lack of jurisdiction, this Court dismissed the writ of error upon the ground that Smith, even though there had been a personal judgment against him for costs in that case, had no such personal or legal interest as would sustain a writ of error to this Court, and Mr. Justice Brown, delivering the opinion of the Court, cited the following cases:

Tyler v. *Registration Court Judges*, 179 U. S. 405.
Clark v. *Kansas City*, 176 U. S. 114.
Turpin v. *Lemon*, 87 U. S. 51.
Lampasas v. *Bell*, 180 U. S. 276.

The Court of Appeals of West Virginia has decided nothing as

Ludeling v. *Chaffee*, 143 U. S. 301.
Giles v. *Little*, 134 U. S. 645.

and speaking for this Court said:

> "These authorities control the present case. It is evident that the Auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their non-performance was equally so. He neither gained nor lost anything by invoking the advice of the Supreme Court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, viz: the tax payers, and in this particular case the case is analogous to that of *Coffrey* v. *Oklahoma*, 177 U. S. 346 44 L. ed. 799, Sup. Ct. Rep. 664. We think the interest of an appellant in this Court should be a personal, and not an official, interest and that the defendant having sought the advice of the courts in his own State in his official capacity should be content to abide by their decisions. It is true that there seems to have been a personal judgment in form against the defendant for costs, the amount of which, however, has never been taxed, and when taxed and paid would probably be reimbursed to him."

In the case at Bar it is manifest that the County Court set up not that the act of 1905 impaired any contract of its own with the State as to its right to levy taxes to the maximum amount fixed in the constitution, because the County Court is a mere administrative branch of the State exercising just such powers as the Legislature sees fit to give it and during the will and pleasure of the Legislature and no longer. There is no contract between it and the State, and in the very nature of things cannot be. The County Court has simply attempted to set up a right alleged to exist in third persons, which rights it claims will be affected injuriously by the statute. This is analogous to the line of cases which have been presented to this Court where defendants have set up outstanding rights in third persons, alleged to be vested under treatise of the United States of Federal statutes, to defeat actions against themselves, and when judgments have been rendered against them have sought to rely on such rights in others as presenting a Federal question, allowing the defendants themselves to prosecute writs of error to this Court. We believe that without exception such ground of jurisdiction has always been denied by this Court. We believe that such has been the unvarying decision of this Court at least since the case of *Henderson* v. *Tennessee*, 10 Howard 311.

against the rights of any creditors of Braxton County, who may claim that the obligations of their contracts have been impaired. On the contrary it has expressly declined and refused to so decide and has plainly intimated that if any one having the right to complain, ever in a proper proceeding shows that any contract right against said County owned by him has been impaired or affected that it would hold such statute void as to his contract. It has merely and only decided that the rights of creditors of the county, if there are any, cannot be settled either in their favor or to their detriment at the instance of the fiscal board created by statute to conduct the affairs of Braxton County. We respectfully but earnestly submit that this was the only decision either proper under the authorities or fair in principle, because if the court could have decided this question without the creditors being before it at all, in accordance with what the County Court contends is their right it could have necessarily, had it deemed proper, decided it contrary to what the County Court of Braxton County deems to be the rights of creditors. And in either event, without being parties and without any chance to be heard, the rights of creditors would have been determined one way or the other without their being before the Court. Such a course, we respectfully insist, would have been plainly *coram non judice* and would not have bound or affected such creditors. If it would not bind or affect them, such decision would be merely the determination of a new question which the Court below could not be called upon to decide.

For the foregoing reasons we respectfully and earnestly insist that the writ of error should be dismissed for the reason that no Federal question was presented for decision to the Supreme Court of Appeals of West Virginia, nor was there any party to this proceeding authorized by the constitution of that State or by statute to present any Federal question, and because the decision of the Court below as to the powers and duty of the county court is final and should be followed by this Court, and, secondly, if the Court should for any reason be of opinion that the decision of the Court below as to such question is not binding upon it, then we submit that as an original proposition and under the decisions of this Court heretofore cited, no sufficient legal interest to support a writ of error exists in said County Court, and for that reason the writ of error should be dismissed; or if the Court should deem it proper to examine the case upon the merits, then we submit that there is

sufficient ground for the motion to dismiss and the judgment of the Court below should be affirmed as correctly deciding the only legal issues presented to it by the pleadings.

In conclusion, in addition to the grounds already mentioned, we respectfully submit that in no event could the County Court of Braxton County, as distinguished from the creditors of said County, properly be heard to insist that the rights of creditors had been impaired, because if such Court was of such opinion, certainly so far as any possible interest of its own in such contracts is concerned it had a plain additional remedy under the language of the statute hereinbefore quoted to which it could resort and to which it must resort before its complaint could be entertained, namely, to submit an increased estimate of the amount necessary to be raised to a vote of the citizens. If voted by the citizens, it could have done everything which it claims it should do, and until voted down by the citizens it has not exerted the remedy placed within its own hands by the Legislature, and therefore on well established principles cannot resort to the Federal Courts to protect its alleged rights which it will not itself protect. As to the County Court, as distinguished from the creditors of the county, it certainly cannot be presumed that, if the question were submitted to a vote, it would not carry. To impair any right the county court, so as to raise as a Federal question, the statute relied upon as so doing, it must impair the contract necessarily and directly, not possibly or upon certain contingencies which may never arise.

All of which is respectfully submitted.

W. Randolph, attorney
for Defendants, in Error.

BRAXTON COUNTY COURT *v.* THE STATE OF WEST VIRGINIA *ex rel.* THE STATE TAX COMMISSIONERS.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

No. 124. Submitted January 14, 1908.—Decided January 27, 1908.

Speaking generally, and subject to the rule that no State can set at naught the provisions of the National Constitution, the regulation of municipal corporations is peculiarly within state control, the legislature determining the taxing body, the taxing districts, and the limits of taxation.

Notwithstanding that plaintiff in error's charge of unconstitutionality of a state statute may not be frivolous, in order to give this court jurisdiction to review the action of the state court sustaining the statute the question must be raised in this court by one adversely affected by the decision and whose interest is personal and not of an official nature. *Smith, Auditor,* v. *Indiana,* 191 U. S. 138.

A county court of West Virginia has no personal interest in the amount of tax levy made by it which will give this court jurisdiction to review at its instance the decision of the highest court of that State determining that the levy is excessive, even though the basis of request for review is the ground that the reduction of the assessment leaves the county unable for lack of funds to fulfill the obligations of its contracts.

60 West Virginia, 339, affirmed.

SECTIONS 7 and 8, article 10, of the West Virginia constitution of 1872 prohibit the county authorities, except in certain specified cases, from levying taxes in excess of ninety-five cents per $100 valuation. In 1904 the valuation of property in Braxton County was $2,799,604. The state legislature, at

an extraordinary session in 1904 and the regular session of 1905, changed the statute law in respect to taxation, largely remodelling the entire tax system. One of the objects of such legislation was to secure a more correct valuation of property. In 1906, under this new legislation, the assessed value of the property in Braxton County was $10,195,301, nearly four times the amount of the assessment in 1904. In view of an expected increase in valuation the legislature enacted, chapter 48 of the acts of 1905 (Code of West Va., 1906, § 29, chap. 39), by which it was provided that no county court should, in the year 1906, assess or levy taxes which should exceed by more than seven per cent the aggregate amount of taxes levied by it in the year 1904. The levy made in the county of Braxton in 1904 of ninety-five cents on the $100 valuation produced the sum of $26,596.23, subject, of course, to such minor reductions as might come from delinquencies and exonerations. Therefore, under the act of 1905, the amount which the county court could levy in 1906 was the $26,596.23 plus an addition of not to exceed seven per cent, or $1,861.73, making a total of $28,457.96. To raise this amount a levy of not to exceed twenty-eight cents on each $100 was sufficient. The county court, however, made a levy of sixty-five cents on every $100, and caused it to be entered upon the records of the court. Such levy of sixty-five cents would produce the sum of $66,269.45, more than double the amount which was authorized under the legislation of 1905. Thereupon the state tax commissioner and certain residents and taxpayers of Braxton County applied to the Supreme Court of the State for a mandamus to compel the county court to change that assessment to conform to the requirements of the act of 1905. The county court made answer and return to the alternative writ of mandamus, pleading that the amount necessary during the current fiscal year to pay the necessary expenses, discharge the county debts and liabilities payable during that year was at least $57,146, not including an amount for interest and sinking fund of certain railroad bonds, theretofore legally issued by the county.

In other words, it may be said, in a general way, that the defense of the county court was that the sum authorized to be levied by the act of 1905 was insufficient to meet the ordinary expenses of the county, pay the interest, and provide a sinking fund for outstanding bonds. It was pleaded specifically that at the time these railroad bonds were issued there was not only no restriction upon the power of the county court to levy taxes for payment of the principal and interest thereof, but, on the contrary, that the general statutory law in force required the county to levy a tax in amount sufficient to pay the annual interest and provide a sinking fund. It was contended that these provisions entered into and became a part of the contract with the bondholders, and that the restrictions made by the act of 1905 worked an impairment of the obligation of the contract, and hence it was in conflict with § 10 of Article I of the Federal Constitution.

The Supreme Court of Appeals issued the mandamus as prayed for, whereupon the defendants brought the case here on error. *State ex rel. Dillon* v. *County Court*, 60 W. Va. 339.

Mr. George E. Price for plaintiffs in error:

This case is not governed by the cases of *Clark* v. *Kansas City*, 176 U. S. 114; *Lampasas* v. *Bell*, 180 U. S. 276; *Wellington, Petitioner*, 16 Pick. 87, 96; *Smith, Auditor of Marion County*, v. *Indiana*, 191 U. S. 138, holding that the objection made to the constitutionality of an act must be by a party whose rights it does affect, and who has legal interest in defeating it.

The county court of Braxton County has a right to raise the question whether it was bound to obey the act of 1905 in this case. It is interested in this matter as a party to the contracts, the obligations of which are impaired by this statute; it is a corporation. See Code, chap. 36, §§ 1, 4, 16, 17 and 43.

The county court is a party to all contracts, debts and obligations of its county. It stands for the county. When bonds are issued they are made in its name and issued by it.

This was the case with the railroad bonds in question. By these bonds the county court expressly agreed to pay certain sums of money at certain times and in a certain way, and it certainly has a deep interest in seeing that it is not deprived of the power to carry out its agreement.

The people of the county, the taxpayers, are certainly parties to the contracts of the county. It is they who pay the county's debts and discharge its obligations. If after they have contracted a debt in their aggregate capacity as a county, a law is passed that impairs its obligations, they have as much right as the creditor to object to it and to test its validity in the courts. This must be done, if at all, in the name and by means of the county court, their representative. *Clark* v. *County Court*, 55 W. Va. 278, 285. While one or a few could bring such a suit, the burden should not be placed on one or a few which ought to be borne by all. And see *Board of Liquidation* v. *Louisiana*, 179 U. S. 622.

The obligation of a contract consists in its binding force on the party who made it. This depends on the laws in force when it is made. These laws are necessarily referred to in all contracts as forming part of them as the measure of the obligation to perform them and as creating the right acquired by the other parties to compel performance. The obligation does not inhere and subsist in the contract *proprio vigore*, but in the law applicable to the contract. *Ogden* v. *Saunders*, 12 Wheat. 213, 302; *McCracken* v. *Hayward*, 2 How. 608; *Goodale* v. *Fennell*, 27 Ohio St. 426; *S. C.*, 22 Am. Rep. 221; *United States* v. *Judges*, 32 Fed. Rep. 715; *State* v. *New Orleans*, 37 La. Ann. 17; *Von Huffman* v. *City of Quincy*, 4 Wall. 535, 549; *United States* v. *Mayor and Administrators of the City of New Orleans*, 103 U. S. 358; *Butz* v. *City of Muscatine*, 8 Wall. 575; *White* v. *Hart*, 13 Wall. 647; *Walker* v. *Whitehead*, 16 Wall. 318; *City of Galena* v. *Amy*, 5 Wall. 709; *Riggs* v. *Johnson Co.*, 6 Wall. 194; *Mobile* v. *Watson*, 116 U. S. 305; *Curran* v. *State of Arkansas*, 15 How. 304; *Planters' Bank* v. *Shark*, 6 How. 301; *Green* v. *Biddle*, 8 Wheat. 1.

The constitutional provisions and the laws which were in force in West Virginia when the railroad bonds of Braxton County were issued, not only authorized, but required the county court to provide for the collection of a direct annual tax sufficient to pay annually the interest on said bonds, and the principal thereof within and not exceeding thirty-four years. Const. of West Virginia, Article 10, § 8. The law governing the county court in such a case is § 59, c. 54 of the Code.

Mr. W. Mollohan for defendants in error:

The county court of Braxton County under the constitution and statute law of the State of West Virginia, as construed by the highest court of that State, is a mere fiscal or administrative board for the management of county affairs and has no personal or direct interest in claims against the county owned or held by third persons, such as will authorize it to prosecute a writ of error in this case, nor under such constitution, statutes and decisions has it the right to stand in judgment for such third parties and present for decision the question whether or not any given statute violates their contract rights against the county.

Even if this court should be of opinion that it is not bound to accept the decision of the Supreme Court of Appeals of West Virginia as to the powers of the county court to stand in judgment for its creditors and present for decision the question of alleged impairment of creditors' contracts, yet under the decisions of this court the county court of Braxton County had no such interest as would enable it to prosecute a writ of error to this court. *Henderson* v. *Tennessee*, 10 How. 311; *Lampasas* v. *Bell*, 180 U. S. 276; *Giles* v. *Little*, 134 U. S. 635; *Smith, Auditor,* v. *Indiana*, 191 U. S. 138; *Tyler* v. *Registration Court Judges*, 179 U. S. 405; *Clark* v. *Kansas City*, 176 U. S. 114; *Turpin* v. *Lemon*, 187 U. S. 51; *Ludeling* v. *Chaffee*, 143 U. S. 301; *Caffrey* v. *Oklahoma*, 177 U. S. 346.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

Speaking generally, the regulation of municipal corporations is a matter peculiarly within the domain of state control. The taxing body, the taxing district and the limits of taxation are determinable by the legislature of the State. *Kelly* v. *Pittsburgh*, 104 U. S. 78; *Forsyth* v. *Hammond*, 166 U. S. 506, and cases cited in the opinion; *Williams* v. *Eggleston*, 170 U. S. 304, 310; 1 Dillon on Municipal Corporations (4th ed., p. 52), and following. True, the legislature may sometimes, by restrictive legislation in respect to taxes, seek to prevent the payment by a municipality of its contract obligations, and in such a case the courts will enforce the protective clauses of the Federal Constitution against any state legislation impairing the obligation of a contract. In other words, no State can in respect to any matter set at naught the paramount provisions of the National Constitution.

Again, that the act of the State is charged to be in violation of the National Constitution, and that the charge is not frivolous, does not always give this court jurisdiction to review the judgment of a state court. The party raising the question of constitutionality and invoking our jurisdiction must be interested in and affected adversely by the decision of the state court sustaining the act, and the interest must be of a personal and not of an official nature. *Clark* v. *Kansas City*, 176 U. S. 114, 118; *Lampasas* v. *Bell*, 180 U. S. 276, 283; *Smith* v. *Indiana*, 191 U. S. 138, 148. In the latter case suit was brought in the state court against a county auditor to test the constitutionality of the exemption law of Indiana, which was claimed to be in conflict with the Federal Constitution. The decision of the state court having been in favor of the act, the auditor brought the case here. Mr. Justice Brown, delivering the opinion of the court, cited the following cases: *Tyler* v. *Registration Court Judges*, 179 U. S. 405; *Clark* v. *Kansas City*, 176 U. S. 114; *Turpin* v. *Lemon*, 187 U. S. 51;

Lampasas v. *Bell*, 180 U. S. 276; *Ludeling* v. *Chaffee*, 143 U. S. 301; *Giles* v. *Little*, 134 U. S. 645; and said (191 U. S. 148):

"These authorities control the present case. It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their non-performance was equally so. He neither gained nor lost anything by invoking the advice of the Supreme Court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, viz., the taxpayers, and in this particular case the case is analogous to that of *Caffrey* v. *Oklahoma*, 177 U. S. 346. We think the interest of an appellant in this court should be a personal and not an official interest, and that the defendant, having sought the advice of the courts of his own State in his official capacity, should be content to abide by their decisions."

These decisions control this case and compel a dismissal of the writ of error, and

It is so ordered.